DOCUMENT RESUME

ED 169 449 HE 011 173

AUTHOR Levenstein, Aaron. Ed.: Lang, Theodore H.
TITLE The Uniqueness of Collective Bargaining in Higher Education. Proceedings, Sixth Annual Conference, April 1978.
INSTITUTION City Univ. of New York, N.Y. Bernard Baruch Coll. National Center for the Study of Collective Bargaining in Higher Education.
PUB DATE Apr 78
NOTE 111p.
AVAILABLE FROM City University of New York, Bernard Baruch College, National Center for the Study of Collective Bargaining in Higher Education, New York, NY ($8.00)

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS Administrator Attitudes; Arbitration; *Collective Bargaining; *College Administration; *College Faculty; Educational Finance; *Faculty Evaluation; Faculty Organizations; Faculty Workload; Higher Education; Political Influences; Private Colleges; Productivity; Regional Characteristics; State Colleges; State Universities; Teacher Attitudes; *Teacher Strikes; *Unions
IDENTIFIERS Faculty College Relationship

ABSTRACT

The proceedings of a conference on collective bargaining in higher education sponsored by the National Center for the Study of Collective Bargaining in Higher Education are presented. The contents are as follows: an introduction; welcoming address by Joel Segall; keynote address by Harold Newman; "The Impact of Collective Bargaining Upon Those Who Govern Higher Education--I and II," by Barry M. Steiner and Samuel J. Wakshull; "The College Professor as Employee: Workload and Productivity--I and II," by Irwin Sobel and James Durham; "Measuring Faculty Productivity," by Harold E. Yuker; "How Governors View Collective Bargaining in Higher Education," by Lewis B. Kaden; "Influences and Patterns in Public and Private Campus Bargaining--Regional and Legal Differences and the Impact of the Political Setting--I and II," by Matthew W. Finkin and Robert D. Helsby; "The Fiscal Outlook for Higher Education," by Morton S. Baratz; "The Fiscal Outlook--A Background for Negotiations," by W. M. Fulkerson, Jr.; "The Anatomy of a Strike (Oakland University)--The Faculty Position," by Louis D. Beer; "The Anatomy of a Strike (Oakland University)--A Management Perspective," by Robert A. Maxwell; "The Anatomy of a Strike (Oakland University)--The Mediator's View," by Leon Cornfield; and summation by Theodore H. Lang. (SW)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED168449

THE UNIQUENESS OF COLLECTIVE BARGAINING IN HIGHER EDUCATION

Proceedings
Sixth Annual Conference
April 1978

AARON LEVENSTEIN, *Editor*
THEODORE H. LANG, *Director*

HE 011123

"PERMISSION TO REPRODUCE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY

NCSCB

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC) AND USERS OF THE ERIC SYSTEM."

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

National Center for the Study of
Collective Bargaining in Higher Education
Baruch College—CUNY

TABLE OF CONTENTS

	Page
1. Introduction	5
2. Joel Segall – Welcoming Address	13
3. Harold Newman – Keynote Address	14
4. Barry N. Steiner – The Impact of Collective Bargaining Upon Those Who Govern Higher Education – I	18
5. Samuel J. Wakshull – The Impact of Collective Bargaining Upon Those Who Govern Higher Education – II	29
6. Irvin Sobel – The College Professor as Employee: Workload and Productivity – I	34
7. James Durham – The College Professor as Employee: Workload and Productivity – II	44
8. Harold E. Yuker – Measuring Faculty Productivity	46
9. Lewis B. Kaden – How Governors View Collective Bargaining in Higher Education	50
10. Matthew W. Finkin – Influences and Patterns in Public and Private Campus Bargaining – Regional and Legal Differences and the Impact of the Political Setting – I	57
11. Robert D. Helsby – Influences and Patterns in Public and Private Campus Bargaining – Regional and Legal Differences and the Impact of the Political Setting – II	64
12. Morton S. Baratz – The Fiscal Outlook for Higher Education	73
13. William M. Fulkerson, Jr. – The Fiscal Outlook – A Background for Negotiations	79
14. Louis D. Beer – The Anatomy of a Strike (Oakland University) – The Faculty Position	85
15. Robert A. Maxwell – The Anatomy of a Strike (Oakland University) – A Management Perspective	94
16. Leon Cornfield – The Anatomy of a Strike (Oakland University) – The Mediator's View	104
17. Theodore H. Lang – Summation	106
The Distinguished National Advisory Committee	109
The National Center's Faculty Advisory Committee	110
Publications, 1979	112

1. INTRODUCTION

The planners of the Sixth Annual Conference of the National Center believed the time had come to examine the factors that make collective bargaining in higher education a unique phenomenon.

Every group confronted by the need to bargain believes itself to be unique. And indeed it is. That is why union contracts have come to reflect different patterns. The steelworkers, for example, have emerged with bargaining tactics and contractual provisions that differ substantially from those of the auto workers; garment workers follow patterns of organization that in no way resemble those of coal miners. In each industry, the union may have to bargain for different objectives. What makes for diversity in traditional bargaining derives from a variety of factors: the levels of skill involved in the work; the distinctive economic problems of the industry; the historical background of employer-employee relationships; the ethnic composition of the workforce; the type of leadership that is thrust to the top by the union membership; and so on.

A New Phenomenon

Nevertheless, as the papers contained in these *Proceedings* demonstrate, collective bargaining in higher education has a unique uniqueness, if such a barbarism is permissible. It is quite distinct even from the kind of bargaining that has emerged in the case of other professional employees – engineers, nurses, elementary and secondary school teachers. The traditions of the Academy, however they have been influenced by the emergence in our times of mass higher education, still persist.

It has been said that unionization came to the university as a result of the "de-authoritization" (to borrow Professor Lewis Feuer's term) experienced by all institutions in the 1960's. One should beware of the *post hoc* fallacy, but there is no doubt that we are dealing with a novel phenomenon: professionals who had been content to live by individualistic precepts when higher education was the function of a small fraternity are now turning, in varying numbers and in different circumstances, to collective action as a means of protecting both their economic interests and their professional status.

It was a distinct shock to many in the Academy to learn from the 1969 Carnegie survey that three-fifths of all college faculty, regardless of the action they were personally willing to take, gave a general endorsement to the principle of collective bargaining. There were those who rejoiced in the thought that a new militancy was being unleashed in the ivy-covered walls of the elite institutions and the high-rise towers of the urban campuses, and that unionization would do combat with those who refused to accord faculty and staff their proper reward in society; others were convinced that academic excellence would henceforth decline under the impact of homogenizing union contracts and that the cohesiveness of scholars would be dispersed in the centrifuge of adversarial relationships.

Obviously the tactics of organization used by the would-be collective bargaining agents – principally, the American Association of University Professors, the American Federation of Teachers and the National Education Association – had

to address themselves to a unique level of education, a self-conscious professional image, and a preoccupation with emoluments and privileges distinct from those usually placed on the bargaining tables of industry.

The papers and speeches reproduced in these *Proceedings* reflect the perceptions of thoughtful spokespersons for both administration and faculty associations. In one case, the reader encounters the views of the representative of a state Governor, concerned about the role of the executive branch and the legislature, the ultimate employer in public universities and colleges. In several cases, neutrals whose function is to mediate or arbitrate disputes in higher education analyze the fruits of their experience.

A Legal View

All of the participants presented their observations and conclusion fully three months before the startling decision was handed down by the 2nd Circuit Court of Appeals in the now famous case of *NLRB v. Yeshivah University*, decided July 31, 1978, 98 LRRM 3245. In ruling that the University's faculty was not entitled to collective bargaining under the National Labor Relations Act, the Court elaborated on the proposition that relationships between the employing institution and its faculty are indeed unique.

In over-ruling the National Labor Relations Board Judge Mulligan, author or the Court's opinion, emphasized the difficulty that the Board had encountered in the past in attempting to apply the industrial model to the academic setting. He wrote (Footnote 14, at 3254-5):

> Finally, in *Adelphi University* (195 NLRB 639 (1972)), the Board conceded that its position arose not from precedent but from its puzzlement in attempting to apply to the unique university governance structure terms which were "designed to cope in the typical organizations of the commercial world." Idem, at 648. The Board admitted that it could not square the Act with the university setting in which "power and authority is vested in a body composed of all of one's peers or colleagues." Idem . . . In two subsequent decisions, *Northeastern University* (218 NLRB 904 (1971)), and *Miami University* (213 NLRB 634), the Board refused to further analyze or reconsider the issue of the supervisory or managerial status of full-time faculty. Instead, it dismissed the question, as it did in this case, solely by reference to its earlier rulings.

This is not the place to analyze the content or the significance of the Circuit Court's decision, which is yet to be reviewed by the Supreme Court. A contribution in that direction was made in the *Newsletter* of the National Center ("The Yeshivah Case – A Turning Point," in the issue of September-October 1978, Vol. 6, No. 4, page 1 *et seq.*). It is enough to note here that the Courts, the Board, the various state agencies dealing with collective bargaining in public universities, the faculty unions and associations, and the bargaining representatives of university administrations – all are aware of the uniqueness of their situation. What is troublesome is the need to define one's role in responding to that uniqueness in a manner that will protect individual, even parochial, interests while at the same time preserving the spirit of the Academy in the face of forces from without that threaten the great tradition of academic freedom or that undermine the economic base of higher education.

The participants in the National Center's conference were well aware of the hazards. There was a frank recognition that points of conflict do exist in the

academic community, though there was, of course, disagreement as to how the disputes could be resolved on terms that can preserve intellectual integrity and assure educational excellence.

There is no need here to attempt a summary of the separate views presented by the participants in the Conference. Their words are in these pages and merit the reader's attention in their entirety, particularly since shadings of difference tend to become substantive issues when translated into contractual language at the bargaining table. A crude restatement would only erode the precision with which the speakers advanced their conclusions.

Diversity in Uniqueness

It may be useful to the reader, however, to point out that one of the most significant elements in the uniqueness of collective bargaining in higher education is the fact that the Academy itself combines so many unique types of institutions: the public sector differs substantially from the private; some campuses put the emphasis on teaching, some on research; four-year colleges do not readily equate with two-year colleges, nor graduate institutions with undergraduate elite centers of learning do not necessarily identify – in goals or methods – with institutions that do not aspire to serve a select clientele. Everett Carll Ladd and Seymour Martin Lipset, in *Professors, Unions, and American Higher Education* (Carnegie Commission on Higher Education, Berkeley, California, 1973, p. 98), have written:

> *Any effort to generalize about trends, however, must always take into consideration the extreme variety in the types of institutions that now comprise the college and university world. Particularly relevant . . . is the fact that faculty power and professional independence vary with the quality of the school. The higher its academic standing, the more an institution resembles a professional guild; further down the hierarchy, colleges take on the characteristics of regular bureaucratic structures, with the "higher-ups" in charge.*

From the standpoint of students of collective bargaining in general – which includes, of course, academicians who teach the subject – faculty unionization is a fascinating theme both because of the differences between higher education and the usual run of enterprises in society, and the differences that are to be found in the wide spectrum of the educational venture itself.

The Program

It should be noted that the Conference program was the product of the academic mind, represented by both administrators and faculty members, and of practitioners in the field. Their agreement on the content to be covered and the roster of speakers, including management and union spokespersons affiliated with the national associations, was a major reason for the success of the Conference. Their genuine desire to create a forum in which all points of view could be given an equal hearing was essential if the gathering was to achieve its purpose – an exchange of perceptions in a setting that would contribute to a closer mutual understanding.

The sessions were structured as follows, in line with the questions suggested in advance to the speakers, though they were free, of course, to pursue whatever direction seemed most appropriate to them:

Monday, April 10, 1978

9:45 *Welcome*

Speaker: Joel Segall, President, Baruch College

Keynote Address

Speaker: Harold R. Newman, Chairman,
Public Employment Relations Board, N.Y.S.

10:15 *Impact of Collective Bargaining on Those Who Govern Higher Education*

What has been the impact on the powers and authority of college presidents, boards, regents and state governors as to roles played, input in the negotiations process and in contract administration?

Speakers: Barry N. Steiner, Deputy Director, New Jersey State Office of Employee Relations

Samuel J. Wakshull, President, United University Professions, AFT

Moderator: Bernard Mintz, Executive Assistant to the President, William Paterson College of New Jersey

11:30 *The College Professor As Employee – Workload and Productivity*

How has the professor's status been affected by higher education bargaining? How are teaching-workload issues negotiated? What are the alternatives? How is productivity measured? What has been the effect of the so-called "accountability" movement (the cult of efficiency)?

Speaker: Irvin Sobel, Professor of Economics, Florida State University

Discussants: James Durham, President, Minnesota Community College Faculty Association, MEA, NEA

Harold E. Yuker, Provost and Dean of Faculties, Hofstra University

Moderator: Irwin Polishook, President, Professional Staff Congress, CUNY, Vice President, AFT

1:00 *Luncheon – How Governors View Collective Bargaining In Higher Education*

Lewis B. Kaden, Professor of Law, Columbia University; General Counsel, Coalition of North East Governors; Former Chief Counsel to Governor of New Jersey

2:30 *Influences and Patterns in Public and Private Campus Bargaining – Regional and Legal Differences and the Impact of the Political Setting*

What regional differences and patterns have emerged? How do political factors impact on faculty organization, recognition and negotiation? What legal considerations come into play – e.g., in determining bargainable issues? How are such questions resolved under federal and state jurisdictions? How is bargaining affected by the nature and structure of the college and university?

Speakers: Matthew W. Finkin, Professor of Law, Southern Methodist University; Visiting Professor of Law, Duke University; General Counsel, AAUP

Robert D. Helsby, Director, Public Employment Relations Services; former Chairman, Public Employment Relations Board, N.Y.S.

Moderator: David Newton, Vice Chancellor, Long Island University

4:00 *Small Group Sessions*

Group A: *Impact of Collective Bargaining on Those Who Govern Higher Education*

Group B: *The College Professor as Employee – Workload and Productivity*

Group C: *Influences and Patterns in Public and Private Campus Bargaining – Regional and Legal Differences and the Impact of the Political Setting*

Group D: *The Unorganized Campus*

What provisions exist for faculty input on administrative and personnel decisions in the absence of collective bargaining? Informal and formal grievance procedures? If organization begins, what are the rights and duties of the parties during unionization and election campaigns?

Co-Chairpersons: James Davenport, Chairperson, NEA Higher Education Council

Susan Fratkin, Director of Special Programs, National Association of State Universities and Land Grant Colleges

Group E-1: *Grievance Procedure, Arbitration and Due Process*

How are "grievances" defined? How is arbitrability defined? What areas of decision are reserved to administration? What areas are subject to review? How have the concepts of "academic judgment" and

"peer review" affected due process for faculty? What is the role of arbitration and how is the authority of the arbitrator defined?

Co-Chairpersons: Julius J. Manson, Arbitrator, Former Dean of the School of Business and Public Administration, Baruch College, CUNY

Samuel Ranhand, Arbitrator, Professor of Management, Baruch College, CUNY

Group E-2: *Grievance Procedure, Arbitration and Due Process*

Co-Chairpersons: Maurice C. Benewitz, Arbitrator; Former Director, NCSCBHE

Thomas Mannix, Assistant to the President, Collective Bargaining and Contract Administration, Western Michigan University; Former Acting Director, NCSCBHE

Group F: *Bargaining Issues in a Period of Retrenchment*

What are the changes in emphasis in bargaining in periods of retrenchment? What are the positions of administration and faculty vis-a-vis order of layoff, order of rehiring, fringe benefits in times of layoffs? What is the impact of layoff on Affirmative Action and the impact of Affirmative Action on order of layoff?

Co-Chairpersons: Michael D. McKeown, Director of Higher Education, Indiana State Teachers Association

R. Frank Mensel, Executive Director, College and University Personnel Association

Tuesday, April 11, 1978

9:00 *Small Group Sessions (continued)*

12:00 *Luncheon – The Fiscal Outlook for Higher Education*

What is the fiscal outlook – the background against which negotiations take place? What have been the trends in faculty compensation? What is happening to job security? Will the traditional patterns of tenure and seniority undergo revision?

Speakers: Morton S. Baratz, General Secretary, AAUP

William F. Fulkerson, Jr., Vice President for Academic Affairs, Phillips University, Enid, Oklahoma

Moderator: D. Francis Finn, Executive Vice President, National Association of College and University Business Officers

2:15 *The Anatomy of a Strike – Three Views*

Three participants in the 1975 Oakland University strike – counsel for the administration, counsel for the faculty and the mediator – review the causes, events and influences for settlement as a background for the following questions: Will resort to strike in faculty bargaining increase? How do faculty strikes differ from public service and industrial strikes? What are the effects on the institution? What are the effects on the bargaining process?

Speakers: Louis D. Beer, of Beer, Boltz & Bennis, Counsel for the Faculty

Leon Cornfield, Mediator, Michigan Employment Relations Commission

Robert A. Maxwell, of Dudley, Patterson, Maxwell, Smith and Kelly, Counsel for the Administration

Moderator: Norman G. Swenson, President of Cook County College Teachers Union; Co-Chairperson, AFT Commission on Higher Education

3:30 *Summation*

Theodore H. Lang, Director, NCSCBHE

National Center Activities

For readers who may not be familiar with the Center's activities, it may be useful to repeat here the purposes that led to the creation of the Center and that help to explain its consistent growth since its establishment in 1972 under the auspices of Baruch College.

Society has an obvious interest in the ability of the Academy to set an example of objectivity, even in examining its own problems. The National Center has attempted through the years to demonstrate that the essential data of campus collective bargaining can be assembled and made available to the parties without favor or bias. The ever expanding support that the Center has achieved from partisans on both sides of the table, from the neutrals – mediators, arbitrators and government representatives involved in the bargaining process – is a heartening testimonial to the fact that academicians, even where their own interests are at stake, can still strive for objectivity.

The basic premise of the Center is that equally well informed practitioners, regardless of which constituency they represent, will produce more viable results in the collective agreements they negotiate and in the day-to-day tasks by which they implement their intent.

To further such ends, the Center conducts the following types of year-round activities:

- The two-day Annual Spring Conference.
- Published proceedings of the Annual Conference, containing texts of all major papers.

- National Center Newsletter – issued five times a year, providing analysis of current trends; news developments; major decisions of courts and regulatory bodies; updates on contracts, bargaining agents and publications.
- Annual Bibliography – Books, articles, research reports and other publications, as well as a selective listing of court cases, NLRB decisions, state public employment board decisions, relating to collective bargaining affecting both faculty and non-faculty personnel.
- Annual Directory of Faculty Contracts and Bargaining Agents.
- Monographs – exploring current bargaining problems in depth.
- Regional Workshops–hands-on format in negotiation and arbitration of grievances; contract bargaining and administration, etc.
- Elvis Lieberman Higher Education Contract Library maintained by the National Center, containing more than 300 college and university collective bargaining agreements, and important books and research reports on the subject.

Acknowledgments

As in the past, the success of the 1978 Conference was due in great part to the planning done by the Baruch Faculty Advisory Committee, whose names appear on page 000, and to the suggestions received from the Distinguished National Advisory Committee, listed on page 000. They are responsible for the over-all topic that was selected, for the specific subjects taken up in each session and for the designation of the individuals chosen to deal with them.

The Center is grateful to the speakers who spent much time in the preparation and delivery of their papers, and in the small-group sessions where they led discussions. Thanks are extended also to the members of the audience who provided additional insights as a result of their provocative questions and statements from the floor in both the plenary and small-group meetings.

The team of Baruch College personnel who handled the actual arrangements continued to function with the same enthusiasm and effectiveness they have displayed in the past. The Center's administrative and secretarial staff deserve full credit for their efficiency in communicating with the speakers, registering the conferees, scheduling group assignments, arranging the meeting rooms, and handling the innumerable personal courtesies to which participants are entitled.

Individual expressions of appreciation are in order. Molly Garfin, the Center's librarian, and Vanchai Arryabuddiphongs, research associate, organized much of the resource material distributed to the conferees. Publication of these *Proceedings* would have been impossible without the cooperation of Lawrence Arnot of the Baruch Audio-Visual Department; Robert Seaver and Suzanne Cooperman, of the College Relations Department; and Mrs. Ruby Hill, of the National Center staff, who painstakingly transcribed tapes and processed the manuscript. Most important, the Center acknowledges its debt to Mrs. Evan G. Mitchell, Executive Assistant to the Director and Production Director of Publications, who carried the responsibility of coordinating all of the activities that were necessary to make the Conference a success.

–Aaron Levenstein

2. WELCOMING ADDRESS

Joel Segall

President, Baruch College

One of the pleasures of my job is the opportunity to appear at a very successful, well-established program – such as this one – and act as if I had had something to do with its success.

But – a streak of honesty, which I am trying to stamp out – and the circumstance that I've been at Baruch for only 9 months compel me to disclaim any credit for this 6-year old program and instead to point to two other factors:

First, the quality of the Conference – subjects, speakers, moderators, discussants – the extra high quality is clearly a result of the dedication and persuasiveness of Dean Lang and his colleagues in the Center. Friday night I was talking to Bill Usery from Bill Usery Associates, Washington, D.C., and I read off to him the topics to be covered and the names of some of the participants. He was so impressed by the program that he ended the conversation because he wanted to re-arrange his schedule so that he could join you for at least some part of the program.

The second factor is the growing importance of faculty collective bargaining in higher education. The size and diversity of this impressive audience is evidence of the importance of the subject, and if that weren't enough, I am told that out of 3,000 institutions of higher education in the country, 600 now have faculty bargaining agents and that these bargaining agents speak for one-fourth of all the faculty members in the nation.

Now the National Center neither claims nor wants credit for the growth of collective bargaining in higher education. The Center is rigorously impartial – as between labor and management and even as to whether collective bargaining is desirable in all institutions. What the Center is not impartial about is the importance of faculty collective bargaining today. This is a different ball game from the one I played in for 20 years. The process challenges the traditional arrangements of the academy and places stress on long-standing institutional structures and conventions. Collective bargaining in higher education is unique and it is precisely that uniqueness that this Conference will examine.

A basic assumption of people in academic work is that research and analysis are the most reliable guides – in fact, the only guides – to intelligent behavior. The function of the Center is to facilitate research and analysis. The cooperation of our colleagues from the various campuses across the country suggests that our estimate of the importance of the issues and of the Center's proper role is about right.

Baruch College is proud to be the home of a unique resource, The National Center for the Study of Collective Bargaining in Higher Education. Though I cannot take credit for the success of the Center – and get away with it – I can welcome you on behalf of Baruch College to New York City and to this Conference. May you profit from it and may you enjoy it.

3. KEYNOTE ADDRESS

Harold Newman

Chairman, Public Employement Relations Board, New York State

When you are labeled neutral, whether dealing with college professors or blue collar workers, what you come to recognize very quickly is that there are no villains and there are no heroes; there are no issues, there are only problems between the parties, and your responsibility is to bring them to agreement.

As I have been involved all of my adult life, either representing union or management, or for the last ten years of my life as a neutral, I become more and more convinced that what we see in the negotiation of contracts, whether blue collar, white collar or professional, is simply in microcosm the push and pull of societal conflict.

Time magazine last week devoted a major part of its issue to the subject of lawyers. I have always found lawyers difficult at the bargaining table. They tend to look at things not precisely the way I do, and I have never been unkind enough to say or quote before from a public platform the old Italian proverb that it is better to be a mouse in the mouth of a cat than a client in the hands of his lawyer, and I won't today. But I will tell you that my friend Philip Ross, who is the industrial commissioner of the State of New York and is a refugee from the Cornell faculty to which he will return as soon as the trauma of state office finishes, gave me a very unpleasant statistic a few weeks ago. He said that in a few years in this country we are going to have more lawyers than steel workers. That tells a lot about the kind of society we're moving into and there are some things about it that I find worrisome because, as the *Time* magazine article points out very well, the reason for the expansion of the legal profession is that it is concomitant with the expansion of government.

The Role of Government

People constantly complain about big government, and they talk about over-regulation. Everybody from President Carter on down talks about over-regulation; they talk about bureaucracy. I am, by definition, a bureaucrat because I hold a state office. If I had a similar position in private industry, I'd be an executive and be profiled in *Forbes* or *Fortune* or *Business Week* as a bloody genius even if the company followed the way of Lockheed or Penn Railroad. Everything that is done in private industry is done correctly, everything that is done in government is done poorly. That is one of the qualities of our time and it is a very difficult one to battle against.

I think we should recognize that government expands so much because of the intense pressure, the need to respond to people who hitherto have either been voiceless or who have muted voices.

Faculty Unionization

I wrote a chapter for a handbook on faculty bargaining that was published last year. This is not an advertisement and I won't even give the title or the name

of the publishers. I was one of many authors. I wrote just one chapter for a rather thick handbook on faculty collective bargaining in higher education, and I began my chapter by saying, We live at a time when priests and ministers talk back to bishops, tenants organize against landlords, prison inmates file grievances against guards and wardens, and to utter shock and dismay, all soldiers, privates, may file grievance charges against officers. So it is not surprising that colleges and universities can no longer be sheltered against the idea of faculty bargaining. It is already a fact, of course, in many places. It is expanding despite a kind of temporary hiatus in activity during the last year or two.

Don Wollett, who spoke here last year, who is one of the leading labor attorneys in the country and who is an expert generally in education and higher education, said that professors have traditionally aspired to the same degree of self-government that obtains in the entrepreneurial professions. Like lawyers and doctors, university professors have sought to establish their own criteria for admission into the profession and to fashion and enforce their own standards of good practise. Maybe in places where this has largely been achieved, collective organization has been slow. But I submit that collective negotiations on campus, despite the temporary hiatus that I spoke about, will go forward in the years to come.

The Vulnerability of Education

The forms that bargaining in higher education are likely to take will probably be substantially different from what we have been used to. In the workshops you will be attending this afternoon and tomorrow, you will have an opportunity to participate in the discussion and observation of these forms.

They present a tremendous challenge to college administrators, to faculty unions and to neutrals like myself. There is a worrisome aspect to this. If there is a uniqueness in collective bargaining in higher education it is because of the uniqueness of higher education itself at this particular time—its vulnerability. Our society suffers from the malaise that is inevitable whenever there is a sick economy. People become cranky about government in general and about taxes in particular.

The taxpayer's revolt is no invention. One of the first places to be targeted is education and maybe particularly higher education. How much do we gain for our invested dollar? It therefore behooves college administrators and college faculty to be especially concerned about not having narrow parochial concerns in considering what goes on outside or off the campus. The political and economic winds certainly buckle everybody who is on the campus.

You will recall Edgar Allan Poe's story, "The Mask of The Red Death," which tells of the nobleman concerned about the plague in his country. He shut himself up in his castle, brought in his close friends, relatives and servants, pulled up the drawbridge, sealed the windows, to keep the plague out. You know the outcome of the story. The Red Death came in through the cracks and crevices of the castle, and eventually all those who were revelling and merrymaking were carried off by the plague.

We in our society are indivisible. Every one of us is subject to the plague which exists for the urban poor who are denied the services, the clinics, the

hospitals, the child care facilities, they need. None of us can isolate ourselves from the pressures and terrible traumas inflicted on a good part of our society. Going to suburbia doesn't make any difference, moving to a high rise apartment house two miles away from the nearest slum doesn't make any difference either. Each of us is impacted and impacted very heavily by what happens in society.

As I said earlier, education generally and higher education especially, are perhaps more vulnerable than anything else to the attacks of those who use the cheapest political platform, who attack the "welfare chiselers." Nobody bothers with anything as tiresome and unimportant as statistics, particularly this one: seventy percent, in round numbers, of those who are receiving social welfare happen to be the elderly, the disabled, the sick, young children; and no society, no civilized society, no decent society, will expect them to work. Nevertheless, it is the cheapest and easiest political platform to talk about the welfare chiseler. And after that comes the "do-nothing educator."

We have had a few strikes in the community colleges in this state. I recall speaking a few years ago to the majority leader of a county legislature during one of those strikes, who said to me, "You know something? The best that could happen is for these people to stay out on strike forever because then we can turn the buildings over to something useful—you know our jail is falling apart." He could see a valuable use for a place of incarceration, but no use at all for a college. There is nothing unique about that gentleman, I can tell you. I have to deal with those types almost every day of my life.

The Common Interest

We in New York State are not unique at all, we are much better than most states, by far, in the amount of aid given to education of school children—but inequities exist. Property taxes remain the base for funding, so there is a serious disadvantage to kids in the areas where real property values are low. Perhaps we are at the beginning of a battle leading to a fresh recognition of the role of education.

Higher education, it seems to me, provides a community of interest between college administrations and unionized faculty or faculty seeking to unionize. The relationship is not necessarily adversarial because two people happen to be on different sides of the table in a collective negotiation. There may well be a community of interest in many areas. There is a community of interest, I submit, against the know-nothings and the Birchers who insist that higher education is a luxury we can't afford in these times. The biggest enemy in higher education, the biggest enemy of faculty security, is not the Pill, as some have said, though certainly the birth rate is going down.

What is important is the role of the college, the role of the university in society—something that is constantly overlooked and distorted and forgotten.

A long time ago, Philip Murray, who was president of the CIO before the merger of the AFL-CIO, said that trade unions meant a change in the quality of life that would produce pictures on the wall, flowers on the table, books on the shelves and music in the home. Philip Murray was talking about industrial workers. I think that the function and purpose of higher education is to improve the quality of American life precisely in that kind of way. We need not only aero-

space engineers, we need human engineers. We need not only the lawyer: who argue complex tax cases, we need lawyers who represent communities and class action. We need doctors in rural areas. We must escape the burden of the narrow and parochial concerns that each of us is capable of slipping into. In unison we must move not only to defend what higher education has achieved for the quality of life in the United States but we must seek to expand it for the engineer, for the physicist, for the poet and the painter.

16

4. THE IMPACT OF COLLECTIVE BARGAINING UPON THOSE WHO GOVERN HIGHER EDUCATION — I

Barry N. Steiner*

Deputy Director, New Jersey State Office of Employee Relations

The question presented for discussion, "The Impact of Collective Bargaining upon Those Who Govern Higher Education," will be analyzed primarily from a public sector viewpoint although portions of the analysis can logically be applied to the private college circumstance. To place in perspective the analysis that follows, let me state at the outset that it is my view that collective bargaining has had a significant impact upon the overall governance of higher education. The impact is universal and clearly demonstrable from a procedural aspect. Whether or not the procedural changes have resulted in a significant substantive impact upon governance of higher education is less clearly demonstrable although there have been serious attempts at quantitatively measuring certain differences between organized and unorganized institutions.[1]

Who Governs Higher Education?

Various aspects of governance of higher education, particularly in the public sector, are intertwined with the executive and legislative functions of State government. This paper will not comment upon the degree to which the Federal Government is involved in the governance of Higher Education. While the Federal influence in certain areas is evident, it is this writer's view that collective bargaining has had very little impact upon how the Federal Government exercises its responsibilities in regard to higher education. However, this analysis will begin by discussing the situation from an institutional point of view.

Thus, a generally held premise is that most colleges and universities have not been governed in a hierarchical sense by a management (president, executive staff, governing board). Rather, the various constitutuencies have shared the authority and responsibilities of management through a consensual system of collegiality. This concept evolved during the 1960's and early 1970's from one primarily involving faculty to the point where students and, in some cases, community groups played some role. The collegiality concept was generally implemented through a system of committees and an institutional senate or similar organization.

The degree to which collegiality actually influenced institutional policy and decision-making depended first upon the nature of the institution's commitment to the concept and, even where the commitment was strong, the nature of the

---

*The views expressed in this paper are those of the writer personally and should not be taken as necessarily reflecting an official position of the State of New Jersey.

[1]Larry L. Leslie and Teh-wei Hu, "The Financial Implications of Collective Bargaining in Higher Education," Center for the Study of Higher Education, Pennsylvania State University, Report No. 29, 1977.

issue involved. Thus, collegiality has always played a stronger role in such matters as curriculum, appointment, reappointments, tenure and promotions, and a lesser role in the area of overall budgetary policy. For the purposes of this discussion the institutional constituencies and levels of authority which will be considered are Governing Boards, Executive Officers (President, Vice Presidents, Deans), Department Chairpersons and faculty. While it is recognized that student and community group constituencies also play a role in governance and that collective bargaining can impact on them this paper will not discuss them in detail.

In considering the governance of public institutions, it is necessary to examine the relationship of the public institutions to the executive and legislative branches of government. For example, is there an executive department of government responsible for directing or coordinating higher education activities in the State and what is the level of its authority, i.e., academic policy review, budget, personnel policies? Alternatively, do the public institutions have direct access to the Governor or the Legislature, and, if so, what is the nature of the relationship, which conceivably could range from *pro forma* oversight to sophisticated review and analysis.[2]

Whatever the nature of the relationship between public institutions and the executive and legislative branches of government, the mere fact of their reliance upon public funding makes it axiomatic that there will be significant external forces affecting, if not controlling, certain aspects of institutional governance. The nature of the relationship is one of the variables which must be considered in analyzing the impact of collective bargaining upon those who govern higher education. In fact, the nature of this relationship is one of the factors that determine the degree of impact of collective bargaining upon governance at the institutional level. The reason for this is that the nature of the institutional-executive-legislative relationship is a major component in determining two significant points: (1) who is the "public employer" for the purposes of collective bargaining, and (2) what is the scope of the appropriate bargaining unit?

Who Is the Public Employer?

It was not too many years ago that most observers would have questioned the need to ask this question in the first place. Of course, the "public employer" is the governing board of the institution! However, since the advent of higher education collective bargaining, this question can no longer be answered quite so simplistically. A review of the circumstances of New Jersey's State Colleges serves as a clear illustration of this point.

New Jersey's State Colleges are each separately organized pursuant to authorizing legislation, each having its own board of trustees and president with broad authority and responsibility for the management of the College, including control of personnel actions, in regard to faculty, e.g., appointment, reappoint-

---

[2] *Faculty Bargaining, State Government and Campus Autonomy – The Experience in Eight States*, edited by Kenneth P. Mortimer, a joint publication of the Pennsylvania State University and the Education Commission of the States (1976).

ment, promotion and tenure. The faculties at the State Colleges were among the first groups organized under New Jersey's 1968 law authorizing public sector negotiations. During the initial negotiations the bargaining agent, an affiliate of the New Jersey Education Association since supplanted by an affiliate of the New Jersey Federation of Teachers, AFT/AFL-CIO, questioned the right of a representative of the Governor to be present at negotiations. The ensuing litigation established that the Governor not only had a right to be represented at negotiations but, in fact, was the "public employer" of the faculty for the purpose of collective negotiations.

The reasoning of the Court was based primarily upon the fact that while the State Colleges had substantial legal authority, they were a part of the New Jersey Department of Higher Education, which is a principal department of the Executive Branch of State Government; the State College budgets were a part of the Governor's overall budget and the Colleges were legally subject to overall fiscal and policy control by various agencies of the Executive Branch in regard to matters significant to the negotiations process.[3]

While the States of New York and Pennsylvania have experienced circumstances similar to New Jersey where the Governor has been designated as the "public employer" of large units of organized faculty, this is not necessarily the predominant model. Though I have not undertaken a formal survey, it appears clear that the majority of organized faculty in the United States bargain under circumstances where the institutional governing boards are considered to be the "public employer."

Collective bargaining has caused a serious review of relationships between public institutions and the executive and legislative branches of government. This review has resulted in a clarification of areas of authority and responsibility which, in the past, may have been ambiguous. In some cases, e.g., New Jersey, New York, Pennsylvania, this review has resulted in the State Government assuming a primary role in collective bargaining involving faculty. Even in situations where the State Government has not assumed a primary role, the advent of bargaining, the binding nature of the commitments made in the course of bargaining and the potential impact on collective negotiations with other State employees have, in many cases, caused State Governments to insist on a closer working relationship with public institutions.

Bargaining Unit Structure

The identification of the "public employer," under normal circumstances, defines the outer limits of the scope of the unit that will be deemed appropriate for the purposes of collective bargaining. Thus, where a governing board is found to be the "public employer" the scope of a bargaining unit will be limited to employees at the institution or institutions under the control of such governing board. On the other hand, where the Governor is the "public employer" there is the possibility that institutions that have previously operated independently of

---

[3]*Association of New Jersey State College Faculties, Inc. v. the Board of Higher Education, the Governor's Employee Relations Policy Council, et al.*, 112 N. J. Super. 237 (L. Div. 1970).

each other will have their employees grouped together into one overall bargaining unit.

While the identification of the "public employer" will normally define the outer limits of the scope of a bargaining unit, the unit ultimately found to be appropriate need not be coextensive with the span of authority of the public employer.

Thus, it is conceivable that a public employer (either the governing board or the Executive Branch of the State Government) may have responsibility for a number of institutions and yet bargaining units may be structured along institutional lines rather than one overall multi-institutional unit.

Aside from problems of the institutional breadth of a bargaining unit, there are further questions about the type of employees eligible for inclusion. Obviously the heart of any bargaining unit formed will be full-time faculty. However, consideration must also be given to the inclusion or exclusion of part-time faculty, medical school or law school faculty, professional academic support personnel and department chairpersons.

It is readily apparent that the ultimate configuration of the bargaining unit is a factor that may impact upon governance. For example, the inclusion of Department Chairpersons in the unit on the assumption that they are primarily faculty members or their exclusion on the basis that they are supervisors may cause changes in the method by which an institution manages its affairs. The potential impact of the Department Chairperson issue will be discussed in detail later in this paper as will other issues raised by the nature of the bargaining unit configuration.

Scope of Bargaining

The legal framework for bargaining and, within that, the scope of bargaining, is a crucial factor which by its very nature must affect the question of collective bargaining's impact on governance. New Jersey's Public Employer-Employee Relations Act is patterned, in major part, upon the system which prevails in the private sector under the National Labor Relations Act, both of which mandate bargaining as to "terms and conditions of employment." Jurisdiction for determination of scope of negotiations was only recently transferred from the New Jersey Courts to the New Jersey Public Employment Relations Commission (PERC). One of PERC's first major decisions involved a comprehensive review of the bargaining obligation as it relates to faculty.[4] This decision has set the basic framework in New Jersey in regard to faculty bargaining and since, in this writer's view, the legal and philosophical premises concisely set forth a productive and workable system, I will quote the portion of the decision which sets forth the essence of the situation:

> A threshold factor in the instant case that has been given careful consideration by the Commission and the parties relates to the unique juxtaposition of two concepts: collegiality and collective negotiations. Collegiality is essentially a system that has developed historically at the University and at many other

---

[4] *Rutgers the State University and Rutgers Council of American Association of University Professors Chapters*, P.E.R.C. No. 76-13, 2 NJPER 13 (1976).

similar institutions throughout the country, whereby certain functions generally performed by management, both public and private, are either shared with, or even entirely delegated to, groups of faculty members. Collective negotiations is the statutory process whereby the University and the AAUP are required to meet and negotiate in good faith with respect to the terms and conditions of employment of faculty members and others represented by the AAUP.

Both concepts deal generally with the employer-employee relationship. Through collegiality the University has historically permitted employee participation in the employer's governance of the institution. Through entities such as faculty senates, committees and other such groups, composed entirely of faculty or in some instances a mixture of administration and faculty, the University has consented to the delegation of a broad range of its managerial functions, and to some extent faculty has thereby become a functional part of management. Collective negotiations, on the other hand, contemplates the mandatory negotiation of grievances and terms and conditions of employment with the representative designated by a majority of the employees for that very purpose. Prior to the advent of formal collective negotiations, the resolution of grievances and the establishment of terms and conditions of employment were among the employer's management functions, and may or may not have been among the functions delegated to collegial entities. Under the Act, however, the University must deal exclusively with the AAUP with respect to the grievances and terms and conditions of employment of unit employees. That is not to say, however, that the University is precluded from delegating to collegial entities its managerial functions in this area. Nor is that to say that the AAUP, as majority representative, may not consciously elect to permit the resolution of given grievances or the establishment of given terms and conditions of employment through collegial processes rather than collective negotiations.

It is quite clear to the Commission that the collegial system does not require the University's relationship with the AAUP to go beyond the grievances and terms and conditions of employment of the employees represented by the AAUP. As is the case elsewhere, matters other than grievances and terms and conditions may be negotiated with the majority representative, but need not be. The fact that some managerial functions historically have been voluntarily delegated to collegial entities does not necessarily alter the University's relationship with the AAUP. If the AAUP seeks to utilize the negotiations process as a means of altering the collegial system in an area beyond grievances and terms and conditions of employment, the University is in the same position as any other employer asked to negotiate with respect to a matter not mandated by law. The fact that employee involvement in management functions is an historical reality at the University does not raise a given issue to the level of a "grievance" or a "term and condition of employment" if it is not otherwise so.

As viewed by the Commission, therefore, there is no reason why the systems of collegiality and collective negotiations may not function harmoniously. Neither system need impose upon the other, with one exception: terms and conditions of employment including grievances. The University is free to continue to delegate to collegial entities whatever managerial functions it chooses, subject, of course, to applicable law. The Act is among the laws applicable to the University as a public employer, and therefore, collective negotiations under the Act would only mandate a change in the collegial system if that system were to operate so as to alter the University's obligation to deal exclusively with the AAUP with regard to the grievances and terms and conditions of employment of unit employees. Beyond that, both systems are free to operate without necessarily interfering with one another.

Mandatory and Permissive Issues

PERC went on to conclude that, in determining which subjects did in fact constitute mandatorily negotiable terms and conditions of employment, consideration would be given to the exclusion of the traditional managerial prerogatives as they evolved in the private sector *and in addition* PERC would also exclude from the mandatory negotiations any matter that constitutes a basic educational policy judgment.

PERC, in the *Rutgers* case and in several later cases, applied its overall rationale to a variety of subjects.[5] A partial list of PERC's subject matter determinations is set forth below:

Mandatory:

Scope of tenure.

Sabbatical leaves.

Faculty teaching contact time.

Grievance procedures which may include binding arbitration.

Faculty right to respond to charges made by students.

Procedures for evaluation of faculty for reappointment, promotion and tenure.

Permissive:

Composition of administrative committees.

Expansion, reduction or reallocation of facilities.

Productivity studies.

Academic calendar.

Course combination and class size.

Limitation on the proportion of tenured to non-tenured facutly (quotas).

Faculty participation in search committees for administrative officers (President, Vice-Presidents, etc.).

Student teaching contact time.

Student grievance procedures.

Existence and composition of a promotion committee.

Methods of teaching and testing.

The more obvious mandatory subjects, such as wages, fringe benefits, and the like have not been listed. It should also be noted that it is PERC's view that

---

[5]See also *Board of Trustees of Middlesex County College and Local 1940, American Federation of Teachers (AFL-CIO)*, P.E.R.C. No. 78-13, 4 NJPER 4023 (1977).

while management is free to choose whether or not to negotiate on "permissive" subjects, it is *mandatory* for management to negotiate as to the impact of the exercise of its prerogative when it acts unilaterally on faculty member's terms and conditions of employment.

Procedural Impact of Bargaining

In its pure form the collective bargaining process requires the channeling to the bargaining table of all matters pertaining to terms and conditions of employment that either party wishes to raise. The theoretical end product of this process is a collective bargaining agreement that will serve, during its term, to control the various aspects of the employment relationship. The process is conducted through bargaining teams headed by each side's chief spokesperson. The process is essentially adversarial in nature and, while it sometimes produces frank and open discussions geared toward mutually determining the result that will best serve the overall needs of the institution on a given issue, this is the exception rather than the rule. The bargaining table situation does not often lend itself to gracious acknowledgment of the rectitude of the other side's arguments in support of a bargaining position unless a strategic or tactical advantage will be gained by doing so.

A faculty bargaining representative's primary mission at the bargaining table is to represent the interests of the faculty *as employees*. While responsible faculty bargaining groups will, of course, take into consideration the overall needs of the institution, it must, if it is to fulfill its representational obligations, present a posture that attempts to achieve what it considers to be the result most favorable to faculty members as employees. It is the bargaining process, and its requirement of a good faith exchange of views and an intricate series of compromises and retreats, that should result in a contract which balances the relative equities of the needs and desires of faculty members as employees and the needs of the institution.

Therefore an obvious procedural change brought about by collective bargaining is that for issues which are the subject of bargaining, the model for resolution changes from collegiality, which in theory is non-adversarial and allows for a broad spectrum of views to be openly debated, to the bargaining model which is essentially adversarial and which requires each side to speak through a spokesperson, defending and seeking to achieve agreement as to each side's ultimate positions.

Another clearly evident procedural change is brought about by the fact that collective bargaining agreements invariably contain grievance procedures. Depending upon the contractual definition of a grievance, this will shift the focus of dispute resolution on some or all matters relating to terms and conditions of employment from the collegial system with final decisions being made within the institution, to the process contained in the contract which, if it ends in arbitration, will place final authority for all grievable-arbitrable issues in the hands of an outside neutral third party. While there will always be a procedural impact on governance resulting from contractual grievance-arbitration procedures, the degree of impact (and any consequential substantive impact on

institutional policy matters) will depend upon the specific language of the contract. Grievance procedures are merely a mechanism for enforcing the bargained-for terms of the contract and not a vehicle for expanding the relative rights and obligations of the parties. However, careful and vigorous grievance procedure administration is required of both parties so as not to allow the bargained-for intent of any provision of the contract to be distorted.

Perhaps the most obvious procedural impact results from the fact that most collective bargaining agreements run for a term of between one and three years and during the term of the contract neither party can compel the other to renegotiate. Thus changes and adjustments as to matters governed by the contract must be made within the collective negotiations cycle whereas, in the past, matters could be dealt with on an issue-by-issue basis when and if problems arose in regard to any matter.

The procedural impact of collective bargaining, in and of itself, brings about changes in governance that can be characterized as substantive in nature. This supposition is based upon this writer's view that the collective bargaining process has a natural tendency to centralize authority and decision-making as to matters that affect bargaining. This does not mean that within a bargaining unit, be it single or multi-institution in scope, there is no room for permitting or continuing decentralized treatment of matters on an issue-by-issue basis. However, in a collective bargaining context, the judgment as to whether certain aspects of the relationship are to be determined on a decentralized basis is, of necessity, made at the central level since the parties are required to first address all appropriately raised issues on a bargaining unit-wide basis. It is readily apparent that the decentralization issue can be particularly sensitive in a multi-institution bargaining unit and even more so where the "public employer" is the Executive Branch rather than an institutional governing board.

Substantive Impact of Bargaining

In New Jersey and in other states having similar collective bargaining laws the degree to which collective bargaining impacts upon traditional campus governance models is theoretically, in large measure, controlled by the determination of the public employer to resist change. This is so because most of the core governance issues, including both collegiality concepts and managerial and educational policy prerogatives, are categorized as "permissive" rather than "mandatory" subjects of negotiations. Thus management *may*, but need not, bargain concerning these permissive subjects, let alone agree to any changes. This proposition, however, is an oversimplification of the situation. In reality, the philosophical viewpoint of the bargaining representative and its determination to bargain as to otherwise permissive subjects must, of course, be considered in the equation. One might speculate about the differences in outlook among the three major organizations representing faculty – AAUP, AFT and NEA. This, however, would be unproductive from an actual bargaining point of view since, whatever an organization's general outlook, its actual representation must reflect the consensus among the members of each particular bargaining unit; this, in turn, is influenced by the history and nature of the institution or institutions

involved in the unit.[6] It does appear that faculty perceptions concerning an organization's overall philosophy do influence which organization the faculty selects as bargaining representative. Therefore there is some likelihood that an organization's general outlook may coincide with the specific views of particular bargaining units.[7]

It is my personal viewpoint that while college management should closely guard its educational and managerial prerogatives, there should not be a ritualistic refusal to bargain in permissive areas. Each situation should be judged on its own merits. There may, in fact, be significant benefit to involving the bargaining representative in *some* areas of governance. In such circumstance, it may improve relationships to recognize this fact in a contract and, from a more practical point of view, may enable the union to be more flexible in agreeing to managerial flexibility in areas that are otherwise mandatory bargainable issues. However, agreement to negotiate in permissive areas should not be undertaken lightly, only where there is a willingness to seriously consider the union's views and at least a possibility that some accommodation can be reached. It is also my strong personal view that it is a serious error for college management to trade off any major managerial or educational prerogatives for purely economic reasons, since in the long run this may bring about the exact opposite result, end up being more expensive and may have a serious long-term impact on educational management.

Against this backdrop, for better or for worse, every conceivable combination of circumstances has been bargained, including circumstances where virtually the entire collegiate system has been codified into contracts and, conversely, where the contract contains nothing more than wages and fringe benefits and a restricted grievance procedure leaving all else to the traditional collegiate model with no union participation.[8]

Therefore it is evident that, depending upon the final outcome of any particular contract, there can be a significant impact upon governance.

In the New Jersey State Colleges situation, which is a multi-institution bargaining unit, the contract does provide for some participation by the union in committee structures. Procedures for reappointment, tenure and promotion have been bargained, including a grievance procedure ending in arbitration. It should be pointed out that the powers of the arbitrator do not extend to reviewing academic or institutional judgments but rather are limited to review of claimed

---

[6]See the Ladd-Lipset Survey, *The Big Differences Among Faculty Unions*, Cronicle of Higher Education, (March 13, 1978) Volume XVI, Number 3, p. 14; Begin, Settle and Alexander, *Academic Bargaining: Origins and Growth*, Rutgers, the State University, Department of Research, IMLR (1977).

[7]In New Jersey both the AFT and the AAUP have engaged in major strikes at higher education institutions although, the AFT's were presumptively illegal having taken place at public institutions whereas the AAUP's was presumptively legal having taken place at a private institution. Moreover, despite issues of illegality, the New Jersey NEA affiliate engages in public school strikes with some degree of frequency.

[8]See, e.g., Begin, Settle, Berke-Weiss, *Community College Bargaining in New Jersey*, Rutgers, the State University, Department of Research, IMLR (1977).

procedural violations or claims of discrimination.[9] Also, where the contract provides for certain uniform procedures in regard to reappointment, tenure and promotion, it specifically protects and leaves intact each college's separate system of collegiality for dealing with these matters. The contract also permits the individual colleges to initiate local negotiations or discussions for changes in their local procedures.

While there is no accurate way to measure the situation, it is my view that the grievance-arbitration model at the New Jersey State Colleges, as presently constituted, has served to improve the fairness and completeness of the peer review process and has sharply focused the academic and managerial responsibility of the academic officers and Board of Trustees to review closely the *recommendations* put forth by the process. I must note, however, that some academic officers have expressed concern that the scrutiny that grievance-arbitration has placed upon the procedural aspects of the peer process may have the tendency of making the "peers" somewhat gun-shy in difficult or close situations.

As indicated previously, the inclusion or exclusion of Department Chairpersons does impact upon governance. However, it is arguable whether it is inclusion or exclusion which has the more serious impact. On the one hand, it is argued that if Department Chairpersons are *excluded* they will lose their identity as "peers" and that this will tend to place the day-to-day functioning of academic departments in the industrial supervisor-employee model. On the other hand, it is argued that if Department Chairpersons are *included* they will lose any effectiveness they may have had as an institution's first line of academic management, and their accountability for the functioning of the academic departments will be diminished. The latter point is obviously true, at least in regard to accountability or usefulness in the bargaining process or as a "management" contract administrator. This has had the natural tendency of forcing Deans to be more directly involved in academic departments, especially where a detailed collective bargaining agreement is in effect. It has also had the tendency to cause some institutions to reevaluate the issue of released time from teaching duties for Chairpersons and, in some cases, to allocate resources to increasing the number of academic assistant deans for the purpose of assuming some portion of the managerial duties or supervision of Chairpersons.[10]

Conclusions

This paper does not purport to be an exhaustive analysis of the question presented but rather is an outline of this writer's personal perceptions of the issues that influence the situation. As a practitioner in the field, recognizing that

---

[9]This system has been in effect since 1974 and there has been an active arbitration caseload with over 100 cases having been resolved or in the process of being heard and decided. It is my view that, on the whole, the arbitrators have abided by the limitations against their intruding into areas of academic judgment.

[10]In any event, if the issue of inclusion or exclusion of chairpersons is contested, it will be resolved on the basis of whether their role at a particular institution places them within the legal definition of a supervisor, which usually pivots on their degree of authority to hire, fire, promote or *effectively* recommend such action.

my major perspective is labor relations but with significant background in the problems of higher education administration, it is my view that collective bargaining has, in fact, had a significant impact upon those who govern higher education. It is also my view that collective bargaining can be a useful tool for productive management of higher education. However, the positive aspects of collective bargaining can be achieved only if there is a willingness to accept the model, attempt to integrate it into the academic circumstance, and to utilize the bargaining process on those matters for which it was intended. I do not suggest that this is an easy task. It does involve a complex and rigorous examination of institutional relationships and perhaps the adoption of a posture which is more hierarchical in style than some institutions are likely to find comfortable. However, the bargaining process is flexible enough to accommodate a broad variety of institutional circumstances. With determination, and most likely with the need for hard bargaining, the overall objectives of the institution as a whole and the varying constituencies can be reasonably accommodated.

5. THE IMPACT OF COLLECTIVE BARGAINING UPON THOSE WHO GOVERN HIGHER EDUCATION — II

Samuel J. Wakshull

President, United University Professions, AFT

One of the most cherished beliefs of academe is that our colleges and universities are governed collegially. Virtually every faculty member understands that the collegial group is not autonomous. In a large system like the State University of New York, most people are well aware that there are several layers of governance beyond the faculty of any one institution.

The ideal of collegiality is nonetheless strong. "To people in Albany we may be little more than occupants of budget-lines," the thought goes, "but on our campuses we are all equals—presidents, professors, lecturers, librarians, counselors, deans." Most recognize the college president as first among equals. Some further understand the scope of the president's authority in the decision making process.

In my own system, SUNY, the State University of New York, for example, the career and livelihood of every single member of the academic and professional staff are almost entirely dependent upon the will of the campus president acting within the limits of that authority.

The Mechanisms of Collegiality

There are, of course, mechanisms designed to ensure faculty "involvement"—or, at least, to perpetuate the belief that collegiality is the keystone in campus decision-making. On some campuses, a faculty senate may be the sole mechanism; on others, the whole faculty may meet periodically to act on matters of great import.

The problem is: The only decisions of a faculty which become policy are those that accord with the president's preference. When that happens, a president is likely not merely to "ratify" the decision but also to hail its implementation as evidence that "collegiality works."

What happens when the faculty's decision conflicts with the president's will is more revealing. The formal *Policies* of the Board of Trustees of SUNY make it quite clear—actions of faculties are nothing more than advisory. College presidents could give faculties autonomy if they wanted to, but most prefer to fall back on the escape clause in the *Policies* to rationalize why their hands are tied. In two decades of college teaching, I have rarely encountered a situation in which the faculty overrode the expressed will of a college president.

A Case History

Let me give an example.

Two years ago, at the State University College at Geneseo, the president asked for a recommendation from the faculty senate. The issue was a program

which was completing its third year. It was called "C.I.E.," or "course-instructor evaluation."

Under C.I.E., individual students rated both the courses they had taken and the people who had taught them. These evaluations were then used—or supposed to have been used—to assess the value of the courses and the performance of the professors.

Upon receiving the president's request, several faculty members invested a great deal of time assembling information about the validity and the value of C.I.E. They concluded that neither was very great, and they recommended that the program be discontinued.

That recommendation happened not to accord with the view of the college president. He began "lobbying" faculty members to oppose their colleagues' findings.

The president lost. The senate voted to urge the elimination of C.I.E. The president could have accepted the determination of the senate but, instead, decided to pressure individual faculty members to call for a referendum of the entire staff, as provided for in the senate's bylaws in the hope that his position would be sustained.

A referendum was held. With almost everyone voting, the faculty as a whole ratified the decision of the senate.

Whereupon the president thanked the senate, thanked the entire faculty, and announced that the C.I.E. program would be retained. After all, he explained, the bylaws make the "will of the faculty" advisory, not binding. So much for collegiality!

It would be possible, I suppose, to argue that the Geneseo case proves that there is, indeed, such a thing as collegiality—and even that it works—and that what happened at Geneseo merely shows collegiality working at its worst.

I submit, however, that the Geneseo case demonstrates something quite different. If taken as typical of what happens when a faculty decision goes against the wishes of the president, the C.I.E. incident proves that there is no such thing as collegiality—at least in the commonly accepted sense of the term. Further, under collective bargaining, the union's ability to curtail such arbitrary actions of management is hampered by the fact that the Public Employment Relations Board has termed that any such proposal would fall under nonmandatory items for the purpose of collective bargaining.

Myth or Substance?

What collegiality is, in short, is a myth.

Like most myths, it has historical antecedents. In the colleges of the Middle Ages, it would appear that faculties decided some issues collectively.

But in this country, from the very beginning, institutions of higher education have always been subject to outside, lay control; and classical collegiality has simply not existed, nor does it today. For one thing, the lay people who govern our colleges and universities are not up to debating issues with faculties. They prefer to designate a single individual their agent and then to hold this one person, usually a president, accountable. That president, if he is to survive, must

choose between those who control and those who form the "family" of academe.

Despite much wishful thinking, that is just as true at Harvard as it is at Geneseo. The Harvard faculty may be debating a new "core curriculum," as are several units of the State University; but the ultimate decision at Harvard will be made by the president and fellows regardless of the recommendations of faculty just as at SUNY such decision will be made by others than the teaching faculty.

The Source of Decision

Who, then, are these "others"—what impact has collective bargaining had on them?

I will confine myself to the system I know best, the State University of New York.

The State Legislature exercises an element of control over SUNY—a potent element, the ultimate power of the purse. If it chose to, of course, it could dictate a great deal more.

Those responsible for the day-to-day operations of SUNY must also deal with the Governor, with his Office of Employee Relations, and with his Division of the Budget.

The Comptroller and his Department of Audit and Control, because of their concern with cost effectiveness and systems analysis, can ultimately affect personnel matters and thus influence academic decisions.

Even more important, the Division of the Budget, exercising its constitutional powers, determines the numbers of professional staff lines assigned to the colleges and the distribution of those lines within the various ranks. Thus, the Division of the Budget can issue a directive that there shall be no more than ten associate professors at a particular campus, and that determination is not subject to review by any other body.

The State Commissioner of Education, an appointee of the Board of Regents, and the bureaucracy which is responsible to him, the State Education Department, are also players in the game of governing the State University. It was the State Education Department, for example, that decertified graduate programs in history and in English at SUNY/Albany—an academic decision of major proportions—without heeding the protests of the faculty.

Only now, after having identified several groups or individuals whose decisions can alter the shape of the University—its size, its programs, its mission—only now do we get to the SUNY Board of Trustees and to the Chancellor to whom the college presidents are accountable when the Chancellor decides to hold them so. I say this because most often we have heard from the personnel in the Chancellor's office that they do not like to interfere with the decisions made by the presidents.

These layers have always existed at SUNY, and their powers are little different in 1978 from what they were before the advent of collective bargaining in SUNY.

With all these heavyweights around, how on earth could collegiality ever have meant that faculty members truly "share" in governing our schools?

The Political Power Centers

In discussing these layers of control, I have been talking of some of the most significant political and economic power-centers in New York State. As I said at the outset of this presentation, most faculty members recognize that the noble arm of collegiality does not reach into the Governor's office, or into the Republican and Democratic caucuses in the State Legislature, or even to the green visor of an accountant in the Department of Audit and Control. If, tomorrow, Audit and Control required that professors punch time clocks, the total SUNY staff would call upon the union to seek redress of a violation of terms and conditions of employment. They would not waste time to rise outraged to declare, "Such action is a violation of collegiality."

I come to the preliminary conclusion that collegiality does not exist either on the campus level or above the campus level. Nor is there ever an explanation forthcoming to faculties as to why their recommendations have been ignored.

Why hasn't the collegial decision-making process worked? It is simply because no group of decision-makers will surrender power voluntarily and no faculty group has had the power to compel all the many layers of governance, even that at the college president's level, to treat them as partners.

But what if 51 percent of all the voters in New York State were college teachers? Or even 10 or 20 percent?

What if our union, United University Professions, was as important a force in determining the outcome of state elections as are the Auto Workers in federal elections?

Somebody would, in fact, have to start listening to us—"us" being the union I have been elected to lead, or to a faculty senate, or to any other group to which the faculty had pledged allegiance.

I believe that our union has made a good start on achieving parity. That is, we'll never amount to 51 percent of the electorate by ourselves. But our affiliating with the 200,000 member New York State United Teachers and the two million member State AFL-CIO have made us a significant factor in New York elections. Our 16,000 votes at the teachers union's convention can mean the difference between endorsing candidate "A" and candidate "B," as have teachers' votes in the past. The combined "political clout" of educators has grown as has the political sophistication of faculties who are now, more and more, involved in the political activities of their collective bargaining agent.

Union Program at SUNY

But what is it the union has achieved through collective bargaining? What success has the union had in guaranteeing some aspects of faculty governance?

The elected representatives of SUNY faculty negotiate with the agents of the Governor, terms and conditions of employment, including compensation.

The union has been able to guarantee, by contract, that all faculty shall receive all written evaluations or recommendations, which in the past they did not necessarily see. No longer is a faculty member denied the opportunity to see such materials and thereby denied the right to rebut, the first step of any due process procedure.

The union, through collective bargaining, has expanded the procedure by which layoffs shall take place. No one wants layoffs. But it is a growing problem.

what with program curtailment, lower enrollments. We deemed it essential to protect the rights of tenure and seniority by contract. More importantly our growing strength enabled us to reverse the decision of administration at the State College at Buffalo to retrench 25 teaching faculty, some tenured faculty as well. The union took the position that no search to fill open lines in departments other than those suffering retrenchment would take place until every effort was made to assign those to be retrenched to other areas for which they were qualified. As a result only four were given a one and one-half year notice of such action. This resolution came about after a number of labor/management meetings were held at the campus; after faculty collected signatures on petitions proposing the resolution finally adopted; after faculty did informational picketing to call attention to the serious threat of program curtailment and faculty layoffs.

And where was the right to labor/management meetings guaranteed? In the contract between the union and the State. The intent of such a contract article is to allow the representatives of the staff to meet with administration to discuss and to thrash out issues for the purpose of resolving problems. Through collective bargaining, we have been able to strengthen the intent of that section of the contract from merely that of "meet and confer" to that of "seeking resolution." It is not always a fast procedure, nor do we always gain our objectives, but it is beginning to bear fruit at the campus level and at the Chancellor's level as well.

Let me give you one example. The State and the union agreed in its last contract to establish a fourth rank for librarians. It was something we had fought for for ten years. And it finally happened. However, we suddenly learned that the Division of the Budget was denying the required certification of promotion into the new librarian rank. The Union demanded by right of contract a meeting with SUNY administration to seek redress. We preferred to resolve the problem in this manner rather than through formal legalistic channels which can go on seemingly forever. Because the new rank had been won through the bargaining process, with the combined efforts of the union, the Governor's Office of Employee Relations, and the office of the Chancellor, the matter was resolved. This is collegiality working at its best.

Conclusion

I am committed to the belief that collective bargaining has not "tied" the hands of the governing structure or administration of the University. What it has done is to open the way for changing the "myth" of collegiality to the reality of collegial governance. It is not an easy process; it certainly is not a fast process—it is one which requires a readjustment of all our thinking.

I do believe that collective bargaining has helped to delineate the roles we play in the academic setting—faculty as well as administration. It has begun to set the guidelines for requiring more accountability from administrators. At the same time, it can set an atmosphere of cooperation in working towards improving relationships between all those involved in the University community, faculty and administration. This has not been nor will it be an easy task. But I believe all of us can adapt to the roles created by collective bargaining, for our final goal—administrators and faculties alike—is to guarantee that the educational environment of the University will be enhanced through all our collective efforts.

6. THE COLLEGE PROFESSOR AS EMPLOYEE: WORKLOAD AND PRODUCTIVITY — I

Irvin Sobel

Florida State University

The mere thought that the "Professor" with its Herr Doctor connotation can be regarded like any other employee is abhorrent to those in academia who are unabashedly traditionalists and elitists. Without making any other normative statements that would reveal my own preferences let me state unequivocally that I look upon myself as a Scholar, Educator, Economist, Labor Economist, Philosopher, and Arbitrator, in that descending order.

The roots of what critics term the "proletarianization" of the College Professor lies in the educational developments if not excesses of the late 1960's. What had begun as the decade of the "Golden Age of American Higher Education" finished with the gold considerably tarnished if not having reverted to fool's gold. It is in this counter-reaction period that legislators, governing boards, and administrators felt impelled to make higher education accountable and led to transporting that which a former colleague of mine, Ray Callahan, had already labeled "the Cult of Efficiency" to higher education. This cult was defined by him as being characterized by the indiscriminate and irrational transfer of business management evaluatory standards, quantified norms of efficiency and productivity, to the academic scene.

A brief selective, and perhaps distorted, review of the entire period is necessary to understand the issues and problems subsumed under the provocative title I have been assigned.

The Period of Expansion

Higher education's golden age was nurtured by a set of unrealistically high expectations concerning its potentialities both for society and individuals, and by a rapidly expanding economy which had some impact upon generating these expectations. Research citing the "high rate" of return on investment in humans through education and the attribution of a major proportion of economic growth to "advances in knowledge" soon were popularized to provide support for massive increases in expenditures for higher education and research.

These trends were intensified by "Sputnik" and the so-called economic growth race. At the other end of the continuum the human and civil rights movement leading to demands for greater equality in opportunity and status, if not income, intensified demand for higher education now increasingly seen as the open sesame leading to these goals.

The end result, summarized by economists as a high income elasticity of demand for higher education for greater than unity (actually 3.5 to 4 times), coupled with the infusion resulting from the high level of economic activity of huge amounts of revenue into state government coffers, led to a massive expansion of state supported higher education and an attempt by the leading state universities to compete qualitatively with the so-called elite institutions. State

Teachers Colleges became State Colleges and subsequently Universities, and new Community Colleges as well as Urban State Universities, all of which reduced substantially the "opportunity costs of higher education," were built.

Multi-university systems, governed by state-wide boards with growing administration staffs making centralized decisions, began to dominate the academic scene. For example, Florida which had three state-wide Universities (one of which was segregated) in 1959, had nine by 1970. All of the new Universities were located in large urban centers. The number of Community Colleges increased from nine to 29 during the same period. The Board of Regents with a staff numbering in the hundreds, which replicates all University staff roles, is now so dominant that it is termed Florida's fourth University.

At the other end of the extremity, massive federal research as well as burgeoning foundation funding, were available to both private and major public University Centers, all of which competed with each other for these funds so readily available that the prevailing mood was: "There's enough for all. The more the merrier." I can recall obtaining a Ford Faculty Research Fellowship of $15,000 in 1955 and regarded myself as "rich" and seven years later receiving a Ford Research grant for $500,000 with no real feeling that anything unusual had transpired.

Research vs. Teaching

The end result was seemingly to transform all professional values, faculty evaluatory criteria and University cost structures. The major University Centers and some lesser ones as well were accused of emphasizing graduate training and research to the complete neglect of and indifference toward undergraduate instruction if not teaching itself. The massive infusion of research resources put emphasis upon grantsmanship and increased the demand for faculty researchers, while the growing body of students increased the demand for faculty as a whole. Since this expansion was preceded by a period in the 1950's when the graduate pipeline had been reduced from its post-World War II high there was increased pressure upon graduate Universities to expand their Ph.D. programs rapidly. The results greatly increased faculty salaries and conferred additional advantages to researchers who could utilize grants for the training of graduate students. The shortages of researchers meant that grants were easily available.

As a result the game became one of how much overhead you could bring into the Universities and in general the reward system was antithetical to teaching. The typical senior and even junior faculty member taught from four to six hours, with far fewer students, and faculty staffs doubled and tripled. The demand for faculty was such that Ph.D. candidates being recruited, who by former standards would have gone to four year colleges, were demanding and frequently getting teaching loads of three to six hours in major institutions and demanding time off for research. No wonder that by 1963, in his Godkin Lectures, Clark Kerr defined the faculty "as self governing independent entrepreneurs if not emperors, united by a common antipathy to the administration over the parking problem, who occasionally as a last resort met students, but generally only graduate students."

Retraction in the Private Sector

By the middle of the 1960's virtually all private Universities, including the highly prestigious ones, were in financial difficulty. The great expansion in costs and the reduction in student load productivity were not alleviated by receipts from overhead and even rising tuition rates. Foundation grants, annual giving and endowment increases were inadequate to keep up with the accelerating rising costs. Commitments involving faculty in graduate centers, special research and training programs, maintenance of expensive research facilities entered into on the basis of "soft money" hardened when many of the grants expired. Grievances of students over the quality of teaching, combined with those of teaching faculty who felt frustrated or left behind, dichotomized the issue by defining the problem as "publish or perish." Governing boards began to question the so-called gift horses, emphasis on research, and many demanded greater emphasis on teaching.

One group of institutions, largely private, predominately located in major metropolitan areas, were even more vitally affected. Those non-research schools, largely undergraduate, and beginning graduate-oriented institutions which depended almost solely upon tuition receipts, experienced the same rising costs of instruction and were forced to accede somewhat to reductions in teaching loads.

At the same time, given the great increase in accessibility of and ease of entry into public higher education, the institutions found it difficult to increase tuition rates without affecting enrollment when low tuition State or Community Centers were being established in their "back yards." In fact, virtually all those private institutions with limited endowments and research funding were confronted with these same pressures.

The end result was a desire for greater efficiency and lower costs by governing boards through increases in "productivity" which involved increases in teaching hours, class size, and reduction in the numbers of faculty.

The Public Institutions

These same trends began to dominate the public sector. By the end of the 1960's the pipeline had been filled, Ph.D. level graduates could not find employment in many disciplines, and the rate of return on the M.S. was low if not negative. Much attention had been focused on the problem of graduate school overexpansion and such works as Freeman's *The Overeducated Americans* and Jencks' *Inequality* had cast doubt about benefits from higher education.

A combination of demographic factors and the reduction in rate of college attendance intensified the problem, which was obscured in some state institutions by a reduction in standards. Retrenchment in federal research funding reduced funding for a large number of research entities, while at the same time declining or less expanding state revenue meant reduced real levels of funding. Higher education, already politically vulnerable because of student unrest and perceived "radical" faculty involvement, became increasingly so when six-hour class loads, the publicized "publish or perish" issue and exaggerated views about high faculty salaries came to public attention. Higher education found itself increasingly vulnerable to legislators who demanded accountability expressed in

terms of "high productivity" and reduced real cost of instruction. Boards of Regents with their burgeoning staffs begin to determine funding and staff sizes even of small units.

The criterion was increasingly the number of student credit hours generated. Such techniques as "Program Budgeting" which influenced the termination or continuance of programs, space-overhead ratios, and the employment of numerous other accounting and control statistics as decision making devices, all facilitated bureaucratization of the University and the burgeoning of administrative staff. Increasingly the University administrators perceived their roles no longer as facilitators of the academic process but instead as managing it and the faculty. Thus the perhaps inevitable polarization between governing boards and administrators on one side and faculty on the other was intensified, especially in those major Universities, Colleges and Community Colleges subject to the greatest financial stress and concomitant accountability and productivity pressures.

Faculty Response to "Productivity"

Faculty, both individually and collectively, responded in different ways. One reaction was that if the faculty members were to be managed and to be reduced to mere employee status they should respond by organizing like other employees to bargain against management. Another related response was to see organization and collective bargaining as instruments for maintaining and enhancing threatened if not disappearing collegial rights. Both responses were emphasized in varying degrees by the major claimants for collective bargaining rights. The AFT was somewhat more likely to emphasize the former point and the AAUP the latter, but both arguments were made in varying degrees as dictated by organizing circumstances.

Given these pressures which contributed greatly to the emergence of unionism in more than 340 Colleges and University Centers it was inevitable that much of the tension and concomitant bargaining would not only center around salaries and compensation but around "productivity" – expressed in relation to teaching load, class size, and even total student hours generated either by the College, Department, or Program. Since these issues not only affected faculty size, awards, and even prestige but also the fate of academic units, it was inevitable that considerable emphasis would be placed upon these issues. Given the complexity of many of the issues, and conflicts in many institutions over what really constituted "past practices," the whole set of issues regarding productivity soon became highly controversial to say the least.

Productivity Issues

To derive any meaning from 343 separate bargaining agreements covering 500 separate campuses would be impossible even if some system could be devised that would enable classification of a diverse myriad of clauses and provisions. However, some understanding of the inherent difficulties might be generated by attempting to analyze the major problems that must be resolved by bargainers dealing with productivity issues, involving determination of teaching loads and class size. These are:

1. What is the normal teaching load in terms of hours? These must frequently be specified by College, Department and Program and in a multi-university setting by Campus.

2. What allowance must be made for class size and number of preparations, especially in the context of large lecture sections, and the administration of multi-section courses?

3. How are such entities as practicums, laboratories, special experimental courses, team teaching, graduate seminars, directed individual studies, play direction, concerts, orchestral, choir or band direction, etc., to be treated for purposes of calculating load?

4. What treatment should be accorded advising, participation on school committees, and research, in reducing teaching load?

5. Should an overload in a given semester be allowed to counterbalance an underload in a previous period, or should overloads always receive extra compensation? Can a faculty member underloaded on one campus of a multi-campus unit be required to compensate by teaching on an overloaded campus?

6. How is productivity determined for larger units such as Colleges, Departments, or Programs, and what is the relation of such productivity measurement to determinations of order of retrenchment and liquidation of academic units?

7. To what extent does productivity, as defined, relate to and affect annual evaluation, promotion, and tenure?

8. What is the status of the Chairman in the bargaining unit and how is his productivity defined?

Related Problems

Collective bargaining agreements have to deal with all of these basic issues and definition of productivity now constitutes the visible tip of a much larger iceberg dealing with retrenchment, the proportion of part-time to full-time faculty, promotion and tenure, funding of academic units, and indirectly academic salaries.

A large proportion of the agreements, unfortunately according to my norms as an academician, try to specify precisely each of the eventualities for each academic unit, thus making the contract literally a thicket if not a mine field of highly specific clauses. A few contracts try to specify the decision making process through which these judgements shall be made, generally by establishing a Faculty-Administration Work Load Review Committees. If any trend seems to be emerging it is in the direction, especially in Community Colleges, of greater specificity and the attempt to cover every conceivable situation.

It is too early to tell whether this attempt is meeting with success or leads to greater ambiguity, a greater number of unresolved and unanticipated individual cases if not grievances from situations that "fall between the cracks." The apparently growing complexity of these clauses would suggest that these issues are far from being resolved.

Contractual Provisions

At this point a summary of the manner in which productivity is interpreted in collective bargaining agreements would be in order.

A large proportion of the agreements specify a twelve hour work load and in many of the contracts, especially AFT contracts, this work load is linked by official statement to a 40-hour week, sometimes less for librarians. Minimum and maximum class size is specified in approximately half of the contracts. Some contracts establish joint Faculty-Administration Committees to determine minimum-maximum loads; in other agreements, however, an attempt is made to specify loads and class sizes. Review Committees are established in some cases. This would imply that unless specifically stated in the agreement, the issue is one for initial management determination.

The maximum number of preparations per faculty member are also frequently, if not almost universally, specified in those agreements that specify the number of student contract hours. In a number of important and publicized agreements minimum class sizes are specified in terms of student credit hours generated. In a few cases the definition of the individual faculty member's full-time load not only indicates teaching hours but also the minimum number of student credit hours to be generated by each full time faculty member during the quarter or semester. These latter specifications are frequently decisive for retrenchment, liquidation, and termination and are sometimes delineated by faculty, department, program, or individual faculty member.

The treatment of equivalencies also differs widely. In many small liberal arts Colleges and in a smaller number of University agreements these equivalencies are determined by faculty advisory committees with some review process specified in case of disagreements between faculty and administration. In larger more complex multi-college and multi-university settings these equivalencies for such diverse functions as practicum, intern supervision, team teaching, music or voice instruction and orchestra conducting are either determined in the contract, or limits are specified with specific determination left to College work load committees.

It would be impossible to enumerate all the various possibilities. New issues requiring specific determination seem to be arising constantly. In states where statute has already established teaching loads prior to collective bargaining, and where a set of equivalencies have already been worked out, the agreements incorporate the provisions into the contract.

A majority of contracts specify the number of student advising hours per week and a substantial number also include provisions concerning the minimum number of days per week (generally four) that faculty members must teach, advise, and be on campus. In many institutions chairmen are members of the bargaining unit and their teaching load is frequently specified by agreement. Generally these agreements provide for a specific reduction in teaching load or a pay supplement for the Chairman, depending on the number of faculty members in the department. In some cases, especially where evening courses are the norm, the contract specifies the maximum number of hours for the given faculty member between two consecutive class meetings.

Maximum numbers of student advisees and maximum numbers of students per class are stated; however, in most cases these merely delineate the norm after which allowances specifically enumerated in the contract are to be granted. For instance, if the maximum per class is 70, a faculty member teaching 150 stu-

dents may multiply his assigned credit hours allowance by a given factor.

The handling of research also is subject to varying treatment. A number of agreements specify proportional load reduction in case of released time through outside funded grants, assuming that the requisite decision makers such as deans have signed off. In regard to internally funded research, contracts either tend to be silent or leave the matter to negotiation between the administration and individual faculty members although a small but significant (in terms of size) grouping of Universities allow released time (generally 20 per cent) for such purposes provided classes are covered without having to resort to hiring replacements.

In a limited number of cases, special allowances are stated for new course preparation, for graduate teaching, for thesis and dissertation supervision; in a larger numbers of cases, past practices established prior to collective bargaining are followed. In a few agreements College equivalency committees have been designated to determine allowances.

Underloads and Overloads

A variety of clauses can be cited in regard to underloads and overloads. In general, these clauses are related to load clauses that establish a number of teaching hours per academic which thus enables balancing off underloads in one quarter or semester with overloads in another. Other clauses specify payment for overloads, generally less than the proportionate share, especially in those institutions that have set up such separate administrative entities as University Colleges, a glorified name for night school. General norms for allocating summer teaching opportunities also seem to be the case. These generally provide for some form of equity with determination by the requisite administrator.

In several campuses in my state, a major number of grievances have resulted from this issue. Some agreements provide that a possible underload on one campus of a multi-campus University can be mitigated by the faculty members' teaching at another campus provided that transportation costs are paid.

The financial constraints which beset many institutions, especially those relying upon tuition, large numbers of part time students, and characterized by fluctuating enrollments, have generated attempts to limit tenure, and the numbers of full time faculty and to rely more and more upon part timers who not only are paid less but who also do not have to be given any commitment other than, "If the bodies are there, we will let you teach them."

A current AAUP study financed by the Ford Foundation, supervised by one of my colleagues, Dr. Howard Tuckman, showed rampantly rising employment of part timers. It is inevitable that the collective bargaining unit, representing full time faculty interests, will attempt to limit the employment of part timers. A few contracts, about 10 percent, primarily in large institutions, limit part-time employment to 20 percent of the teaching hours. One can expect this issue to magnify in the near future as faculty bargaining representatives increasingly attempt to reduce the employment of part timers and as administrations try to rely more and more upon them.

A related problem is the growing utilization, according to Dr. Tuckman, of faculty in non-tenure earning categories. These non-tenure earning categories and

tenure limits are resisted in AAUP contracts. They are less likely to be resisted especially in NEA and a few AFT contracts. In fact, a number of NEA contracts permit tenure limits to be established and then allow faculty members "for whom there is a sufficient workload and whom the administration would like to employ, to continue ad infinitum on annual contracts and to be considered for tenure when a tenured vacancy in that department appears." The NEA contracts cited in this regard specifically attempt to exempt the particular university or colleges from AAUP tenure regulations. To my knowledge, this issue has not yet been tested in the courts.

Layoffs for Exigency

Faculty productivity standards are cited in clauses covering retrenchment or layoffs for exigency. The case of the University of Detroit recently cited by the AAUP for possible censure is perhaps illustrative. Student contact hours generated were explicitly introduced in the contract, and although no specific list of criteria for retrenchment had been specified this criterion was utilized as a first-order decision maker for determination of the magnitude of retrenchment of basic academic units.

Programmatic need defined largely in terms of student credit hours generated was not only decisive in determining the magnitude of retrenchment of basic units but also was accorded 50 per cent of the weight in specifically determining who was to be released. Length of service was accorded only 20 per cent and teaching effectiveness 10 per cent, scholarship 15 per cent and the possession of a terminal degree only 5 per cent. Despite collective bargaining the faculty played no role in determining the existence of exigency or setting the criteria for retrenchment. Given this record it is expected that future contract negotiations, especially in certain kinds of urban institutions, are likely to be protracted over this issue and will attempt to delineate quite specifically the entire process, including the role of productivity factors in such decisions. Such productivity factors as student credit hours generated by the faculty, when buttressed by student evaluation documents, are likely to influence annual evaluations and indirectly promotion and tenure, especially in predominately teaching institutions. In short when such quantitative criteria are utilized for one purpose they are likely to be generalized, especially if the evaluation process involves subtle qualitative distinctions such as the quality of the teaching research and service. Quantitative surrogates, once established, tend to predominate over qualitative ones, and even though certain qualitative evaluation criteria are specified in collective bargaining they tend to be interpreted quantitatively.

Varying Organizational Patterns

If one is attached to a particular organization, as I am as a life-time member and frequent officer in the AAUP, he can perhaps find subtle differences between the various contenders in the contest for leadership in faculty collective bargaining. One result is the much greater likelihood of incorporation into the collective agreements of long standing AAUP policy statements such as those pertaining to tenure, criteria for exigency, and even collegial rights. One could

argue that AAUP contracts tend to leave more decisions to collegial bodies and are more likely to delineate processes rather than specific detailed rules. However, some of the most detailed specific provisions analyzed here are found in AAUP contracts, and the differences probably are more the result of the nature of the institutions and the extent of collegial bargaining than any inherent differences between so-called AAUP elitists and collegialists, and AFT "trade unionists," with NEA somewhere in between. Some major AFT contracts refer to employees rather than to faculty members, but this may reflect less of a "concealed bias" than the more encompassing nature of these particular bargaining units.

Accountability and Efficiency

What has been the effect of collective bargaining on the whole accountability and cult of efficiency trend? It would be hard to make any assessment from the available evidence since collective bargaining was itself a response to a growing and increasingly established "managerial" mentality in major American institutions.

Certainly accountability facilitated the process of bureaucratization, and the emergence of a competing bureaucracy bargaining over these issues could not be realistically expected to negate these trends. At best collective bargaining has resulted in joint determination of the accountability rules; at the least it has set up some review of unilaterally imposed quantitative efficiency norms. In short, collective bargaining has not arrested the trend: if anything it has been an instrumentality in making the efficiency criteria more specific.

Whether the discretionary collegial decision making process, which ostensibly reflected qualitative professional judgements, was not already under attack in major University centers or even was functioning other than in name only, is highly conjectural. Collective bargaining arose in those institutions where collegial decision making as an alternative for resolving workload and productivity, retention, and promotion issues was more of a dream than a reality.

Future Trends

If you will permit a few predictions from my already beclouded crystal ball about the future direction of collective bargaining in higher education and the issues most likely to be controversial, and most vigorously bargained, I would include the following:

1. Retrenchment criteria, work load and "productivity", versus more traditional tenure and academic considerations.
2. The status, work load, and extra compensation of the Chairman.
3. Limitations on part time faculty.
4. Status of long service, non-tenured and non-tenured track personnel, and the imposition of tenure quotas.
5. Compensation for overload.
6. Qualitative dimensions of productivity as related to assigned duties.

Although clauses pertaining to assigned duties may not seemingly be directly linked to work load and productivity issues the linkage is a close one. With

the reduction in the importance of the Chairman, the responsibility for assigning not only duties but how these are to be evaluated may become increasingly the subject for collective bargaining. Whether faculty evaluation for annual merit increases, retention, tenure and promotion will be based solely upon "productivity" in the performance of assigned duties, or if other accepted qualitative academic productivity criteria such as research, service on committees, and professional activities, for which no specific work load assignments are made, should be allowed to influence evaluations is already a subject for bargaining.

Specific clauses dealing with the identification and determination of the qualitative dimensions of productivity are likely to become more frequent as bargaining continues and as the competition over retention, promotion and tenure intensifies.

7. THE COLLEGE PROFESSOR AS EMPLOYEE: WORKLOAD AND PRODUCTIVITY — II

James Durham

President, Minnesota Community College Faculty Association, NEA

First of all, let me identify my perspective. I am not a theoretician about collective bargaining but a practitioner. The only articles that have my name on them are found in three master contracts statewide. I am too busy with the problems of representing faculty members to look at the big picture, so let me tell you about some of those problems.

I'd like to address a few of the questions found in the description of this session in your program. The first one is, "How has the professor's status been affected by higher education bargaining?" I'd like to just turn that around to read, "How has collective bargaining been affected by the professor's status?" People don't resort to collective bargaining unless they are dissatisfied with their status and feel powerless as individuals to do something about it.

Workload Defined

I think the increase in the workload and the decline in the quality of teaching have turned a lot of people to collective bargaining. It is difficult to determine the effects of collective bargaining on workload because, in the last decade or so that we have been bargaining collectively in higher education, there have been so many other changes in society. Great economic changes, social changes, changes in our goals, our values, and even the birth rate, have affected our status and our workload. So I think it is hard to tell exactly what effect collective bargaining has had.

There are two things that I can see. One is that collective bargaining has given us a better definition of what the workload is. I have not yet seen a contract, especially a first contract, that has made any striking changes in past practice. But the contracts have defined what that practice was and made it difficult to go beyond those maximum limits. So it starts off by making the current practices binding.

Equalization

The second effect that I have seen is that there is certainly a strong trend in collective bargaining for equality among faculty members, among colleges, among departments, among individuals. This is a very difficult aspect of collective bargaining to deal with. Every faculty member that I know can point to a lot of other people who do less and make more money, and they want the contract to take care of that. So, in trying to promote equality among individuals, departments and colleges, we have to get into a lot of detail as described earlier.

In our last contract I thought we made quite a bit of progress for some of the people who had been on the academic fringes and had not been dealt with in earlier contracts, especially coaches and people who deal with student activities. We were able to get a better deal for them. I was feeling good about them and

got a very irate letter from the president of the women's volley ball coaches who thought that the basketball people were getting too many benefits and volley ball coaches ought to get more. You can see that no matter how many times you try to get at all those aspects of equality, we are never going to have complete equality. But I think it is an effect that collective bargaining has had on workloads.

Productivity and Quality

"How is productivity measured?" I am troubled about how productivity is measured. I hear business management terms like cost efficiency. Cost efficiency means you do more and you get less, and frankly I'd rather turn that around. I think another byproduct of American business management is planned obsolescence, recall of defective products. If the current trend continues, as I see it, we are going to have to recall a whole generation of students. So I am disturbed by the way productivity is measured in terms of full time equivalents, cost efficiency, bodies, and diplomas, but I am very concerned by what is happening to the quality of higher education.

When the faculty argue for lower workloads, workloads that allow them to give quality instruction, to deal with individuals and their needs, we are criticized as self-serving, greedy, lazy, wanting to do less for more money. I think it is the responsibility of both faculty and management to speak out for quality education and you can't do that if you have twice as many students in classes as you should have. That trend continues. With more students, more assigned classes, more preparation, quality deteriorates.

The last question asks, "What is the effect of the accountability movement?" I think the effect is a decline in quality, pure and simple. Collective bargaining has not been successful, in my opinion, in dealing with this problem. Collective bargaining didn't cause the problem. The problem is caused by the decline in the economy, change in goals, all the events in society that are happening. Collective bargaining has not been very effective in dealing with this situation.

I think that collective bargaining has been pretty good in dealing with the workload aspect once you have the money. Collective bargaining is better at getting more money for salaries than getting lower workloads.

Beyond Collective Bargaining

In closing, then, I would say that collective bargaining isn't enough to provide quality education. You can't do without collective bargaining, but you can't stop there. The decisions on funding education are made by politicians, and we must involve ourselves in the political process—I mean management and faculty too. Frankly, I am disappointed with the role management has taken.

I hear management failing to respond to people who are saying, "We want high quality." It is one thing to manage a MacDonald's hamburger stand and turn out more hamburgers for more profit; it is another thing to manage a college or university and turn out people who perhaps are literate.

So I think we need to go beyond the collective bargaining process and get involved in the political process. We must make sure that funding is available for quality education and for adequate workloads.

8. MEASURING FACULTY PRODUCTIVITY

Harold E. Yuker

Hofstra University

Any discussion of problems relating to the measurement of faculty productivity must start out with the recognition of the fact that there are many problems involved in this type of measurement. Even attempting to measure faculty productivity disturbs some people who consider productivity unmeasurable.

Caveats for Evaluators

In this type of measurement there are some initial assumptions that are very important even though they are often ignored:

1. Productivity is a complex, abstract concept. As such it can be measured only approximately and not measured with absolute accuracy. Often measurements of productivity are attacked for being viewed as more accurate than anyone claims they are.

2. No *one* specific measure is adequate. We must use several converging measures. Some such measures that are frequently used yield similar results and are helpful. This concept is related to the idea expressed about twenty years ago by Dr. Paul Lazarsfeld in his discussion of the interchangeability of indices.

3. Productivity can be measured in several different areas such as teaching, research, relationship with students, etc. Which areas are used will be decided either by the collective bargaining agreement or by the statutes or rules of the particular college or university. The particular areas in which measurements are considered important will most probably be greatly influenced by the predilections of the members of the collective bargaining teams or of the administration and faculty of the university.

In discussing specific measures of faculty productivity, I find it useful to make a somewhat arbitrary distinction between input and output measures. Although the purist will consider the distinction occasionally fuzzy, I find that it is often useful.

Input measures involve variables such as time, effort, and money. Some of these measures apply mostly to individuals, others apply to departments or schools. These measures reflect the behaviors of a person or a combination of persons.

Input Measures

The following are some of the more important input measures:

1. *Assigned teaching load.* This is equal to the number of credit hours taught. The usual assumption is that a 12-hour load is more productive (from the point of view of the institution) than a 3-credit hour load or a 6-credit hour load.

2. *Contact hours.* This is similar to the credit hours taught, but includes such things as the time spent in laboratory courses, studio courses, and other courses in which contact hours differ from credit hours.

3. *Total student credit hours.* Credit hours times class size.

4. *Cost per student credit hour* or student credit hours per full-time faculty equivalent. This is a frequently used measure of department productivity. A number of people maintain it should be adopted as *the* measure of faculty productivity.

5. *Work time.* This refers to the total amount of time devoted to the job as a full-time faculty member. It is the most frequently used measure. While the specific definition of work time may vary from one institution to another, it is most often defined as including everything relating to the job of being a faculty member at an institution of higher education. There have been hundreds of studies of the number of hours that faculty members devote to their jobs. Most of these studies converge to indicate that faculty members state that they work approximately 55 hours per week during the nine-month academic year.

Total number of hours per week is seldom mentioned in either institutional regulations or in collective bargaining agreements. However, most institutions have regulations dealing with the number of hours devoted to teaching and some institutions do have regulations dealing with number of faculty office hours. Almost none have regulations dealing with the total number of hours devoted to the job per week or even to the number of hours that a faculty member is expected to spend on campus. This seems to be a very controversial issue.

6. *Effort.* Although it is often stated that effort is at least as important as total work time, attempts to measure effort have usually failed. Because of the difficulty of measurement and of some evidence indicating that effort is redundant when one considers work time, this is usually ignored as a measurement of input.

Output Measures

We may turn next to a discussion of specific measures of output as indicators of faculty productivity. Output measures involve indications of achievement rather than indications of input. Some of them are measures of the achievement of faculty members, while others measure student achievement. The following list indicates some of the kinds of measures that are used.

1. *Number of publications.* This is often considered important, even though different institutions may weight different kinds of publications idiosyncratically.

2. *Number of citations of a person's publications.* This is considered as an indication of the scholarly impact of an individual's writings. It reflects not how much you write but the number of references that others have made to what you have written. More sophisticated approaches tend to emphasize citations more than number of publications even though this is a somewhat controversial topic.

3. *Number of awards received.*

4. *Number of grants received.*

5. *Attendance at committee meetings, faculty meetings, etc.*

6. *Number of students who go on to graduate or professional schools;* the number who get doctoral degrees, the number who publish, etc.

7. *Students' scores on measures of student achievement,* such as the Graduate Record Examination.

8. *Ratings of a faculty member's performance by students, colleagues, or members of the administration.* This too is controversial for obvious reasons.

Factors Affecting Workload

A review of the literature indicates that data support certain factors as influencing faculty workload and others as not influencing faculty workload. Let me start off with a discussion of three factors that are often assumed to influence workload although the data indicate that these factors are not important:

1. *Class size.* Data from many studies indicate that class size is not a crucial influence on how much time the faculty member devotes to a course, although it does affect costs. Usually faculty members adjust the number and type of assignments to the class size and the amount of assistance that is available.

2. *Course level.* This has also been found to be unimportant. Data indicate that faculty members do not devote more time to advanced courses or to graduate courses than to elementary courses. Although this is a commonly accepted assumption, it must be labeled a misconception.

3. *Repeated sections of the same course.* This factor does not lead to a significant decrease in faculty worktime. The data, in conjunction with those cited in the previous two statements, lead to the hypothesis that most faculty members normally allocate a specific number of hours per week to instructional activities. The total number of hours devoted to all aspects of teaching apparently do not vary greatly as a result of specific course assignments. The data currently available support this hypothesis, but further data are needed before it can be stated that the assumption is definitely true.

Other data indicate some factors that *do* influence faculty worktime. Three such factors have been found to be important in several studies.

1. *Initial preparation of a course.* All of the data indicate that the first time a particular course is taught it takes much more preparation time than subsequent presentations of the course. This is particularly true of lecture courses. Some data indicate that it is also true of the second time a course is given. Surprisingly, there are few data indicating the amount of time involved in planning a course.

2. *Subject matter.* This has been shown to be important. Almost every study shows large differences among departments within an institution in the amount of time faculty members devote to course preparation. Departmental differences, however, are not necessarily consistent from one institution to another. Furthermore, most institutions ignore these differences in assigning faculty work loads. A few institutions give lower teaching loads to people who teach English courses which require the regular submission of papers. Similarly, professional schools of law and medicine usually have reduced teaching loads. Outside of these exceptions, differences among disciplines are few in most colleges and universities.

3. *Mode of presentation.* The technique of instruction has also been shown to be important. While there are few data, those that do exist seem to indicate that lectures require much more preparation time than other types of presentation. The data do not indicate any justification for considering laboratory hours the equivalent of classroom hours as is the case at many institutions.

Continuing Controversy

These are the techniques currently being used to measure faculty productivity. Many of them are controversial. No one of them is universally accepted. The most sensible approach is probably to use a number of measures and to look for convergences among the data. While subtle distinctions may be hard to make, there is seldom disagreement on the question of which faculty members are most productive and which are least productive. Measures such as those described will provide objective data in support of these observations.

9. HOW GOVERNORS VIEW COLLECTIVE BARGAINING IN HIGHER EDUCATION

Lewis B. Kaden

General Counsel, Coalition of Northeast Governors

I have been asked to speak on How Governors View Collective Bargaining in Higher Education. I suppose the appropriate subtitle is, The Uneasy Relationship Between Governors and Higher Education Administrators in the Public Sector.

The subject reminds me of the gentleman who was recently elected to the position of president of an institution of higher learning as it is called in the public sector. He discovered upon taking office that he had responsibility for bargaining collectively with his faculty. He was a little alarmed at this, and he called up a friend who was an expert in such matters and said, "What am I to expect?" His friend said: "There is really nothing to it. You sit down and talk about problems of mutual concern and after a period of time you reach an agreement and sign it. You shouldn't really be concerned."

But, as sometimes occurs in higher education bargaining, the deadline for contract negotiations passed and the bargaining was going on and on. Eight or ten months beyond the deadline they were still discussing the terms of the contract. The president called up his friend and said, "You told me this would just be a couple of sessions and I would reach an agreement with my professors, but now it is going on ten months and there is no sign of an end." And the friend said, "I forgot to tell you one thing. Bargaining with the faculty is like making love to a gorilla. You have to stop when they're tired, not when you're tired."

Legislative Background

I want to talk a little about my experiences in New Jersey, in particular as they relate to labor relations in higher education, from the perspective of the executive office—how at least one governor, Governor Brendan Byrne, tended to view that process and how we implemented those views. To put that in perspective, I think it would be useful for those of you who are not familiar with the structure of higher education in the public sector in New Jersey, if I were to summarize and add to what Barry Steiner said this morning.

New Jersey enacted in the mid-1960's a higher education act creating a department of higher education, a board of higher education, and a state-wide Chancellor of higher education reporting to that board as well as to the Governor. As the then Governor saw it, the principal mission was to create out of a system of teachers colleges and an embryonic community college system a public sector system of higher education of the scope and magnitude appropriate to a state with the size and population of the state of New Jersey.

Now some 10 or 12 years later the state of New Jersey has eight state colleges providing a broad program, and the Rutgers state university. The state government contributes more than $100,000,000 a year to higher education, a system of eighteen community colleges, plus the College of Medicine and Dentistry (the

Rutgers medical school), and the New Jersey Institute of Technology. I looked at the Governor's last budget proposals, the budgets submitted to the legislature in February and discovered that New Jersey is now contributing more than $350,000,000 to higher education. Except for a very small amount, some $10-12,000,000 to independent colleges, all of that goes to institutions of higher education in the public sector.

On the labor relations side, New Jersey, like many other states, enacted a law giving public employees the right to organize and bargain collectively. That law was first passed in 1968. It was highly experimental, and the experience was somewhat troublesome both in higher education and in other sectors. There were many growing pains, as is not uncommon when these processes of collective bargaining are introduced into the public sector.

The law made no distinction between higher education and other public services. The only exceptions were certain non-material differences in terms of unit definition as applied to police and firemen. But institutions of higher education came under that law just as did elementary and secondary education and all other public service. A variety of organizations, affiliated and unaffiliated with national groups, began the process of organization, but until Governor Byrne was inaugurated in January 1974, the Rutgers faculty had been organized by the AAUP. Most if not all of the state college faculty had been organized into a unit represented by an AFT affiliate. Of the 18 community colleges, at least as of today, according to Barry Steiner, 16 are organized, and of that number 12 are affiliated with the NEA and 4 with the AFT.

Thus in the public sector, in this system of public higher education that was created under the statute, the extent of organization is considerable.

Unfair Labor Practices

That law, as passed in 1968, which governed the organization that I have just described, did not include any provision for unfair labor practices nor any provision for administrator determination of the scope of bargaining. It provided simply for a Public Employment Relations Commission with the power to make unit determinations and the power to administer impasse procedures, which themselves provided for no finality—no step beyond fact-finding and recommendations that could be rejected by either side.

There were some who thought that there was implied in the law an inherent power to enforce the law and thereby to police unfair practices, but the courts thought otherwise. The law did very little to define the boundaries of the relationship between the pre-existing civil service system and the new collective bargaining process. It set up a Public Employment Relations Commission—a part-time commission with a part-time chairman and a very small staff.

During the campaign in 1973, there was considerable debate as to whether changes in the statute were required. Governor Byrne as a candidate committed himself to proposing that the statute be amended principally to provide for unfair labor practice jurisdiction. So the bill was introduced in 1974 and the statute was amended to provide for prohibitions on unfair labor practices. Also the chairman of the Commission was made full-time.

Impasse Problem

The question of impasse and finality, on the other hand, both for higher education and for other services, was, as is often the case in government, deferred out of an understandable difficulty in resolving differences both on the union side and among government officials. The choices were between the status quo, no finality, some form of legislative finality, some parts of the Taylor Law, some form of third party determination for bargaining and arbitration, and some form of limited right to strike.

As is the habit with public officials the response to this unhealthy dilemma was to appoint a study commission. It was chaired by Dean Richard Lester who, as many of you know, is a distinguished expert in industrial relations and is thoroughly familiar with the problems of higher education and administration. Dean Lester wrestled with the problem for many months. I think that he is sympathetic, like myself, to a limited right to strike statute such as Hawaii and Pennsylvania now have. But political realities counseled against that and so in a prudent deference to the political realities, Dean Lester threw up his hands, recommended the statutes imposing final arbitration for policemen and firemen, and said, "We will watch and see how that works out before we confront the problem of what to do about faculty members and teachers and other public servants."

Now that's the background against which one can see how the Governor approaches collective negotiations.

Tensions in Higher Education Bargaining

There is considerable controversy between the executive branch officials and some higher education administrators in this state. The state established in the Cahill administration and continued in the Byrne administration, an Office of Employee Relations, with a director, Frank Mason, who is highly skilled and experienced. That office is responsible for negotiating on behalf of the state.

Mr. Mason reports to an employee relations council which at one time, in the Cahill administration, had been chaired by the president of the Civil Service Commission and in the Byrne administration by the Governor's counsel. In the field of higher education, Mr. Mason and his associates, including Mr. Steiner, negotiate directly on behalf of the state for the eight four-year state colleges. They also negotiate on behalf of the College of Medicine and Dentistry. They attempted in a loose way to monitor, though not to participate directly in, negotiations conducted separately by the community colleges with their faculty; they also attempted to monitor and at different times to take more or less interest in the substantive decisions being made, though they do not participate directly in the negotiations between Rutgers and its faculty represented by the AAUP.

The draftsmen of the Higher Education Act back in the 1960's shared one quality in common with the draftsmen of the State University Act, enacted in the 1950's when Rutgers became the state university. They found it easy to build into the statutes some purposeful ambiguity–for instance, on the question of the relationship between Rutgers and the state government, especially on such

hardly trivial matters as budget review, program review and the question ultimately of the extent to which the Chancellor of Higher Education or even the Governor could exercise influence over those decisions.

In a big government where the state is contributing more than $350,000,000 to public higher education it is not surprising thatthe financial impact of that contribution and of the activities for which that funding is used are matters of concern to the Governor and to the Legislature. That creates understandably a tension between college administrators and the Department of Higher Education which is concerned with the decisions that are being made in the administration of higher education programs. The Governor and the Legislature are concerned with the determinations of the administrators on budget allocations and to some extent with the decisions they are making in the collective bargaining process and in the contract administration process.

Preserving Uniformity

That tension came to roost, I think, on several occasions in 1974. A decision was made that, to the extent the state colleges or Rutgers negotiated wage increases, they should be consistent in general with the pattern of wage increases being adopted throughout the state civil service and being negotiated with other state employees. Therefore the hand of the Governor, operating through his director of employee relations, was more firmly and more clearly felt in negotiations on matters of direct salary change. That, I think, might have been acceptable to the public administrators of the state college system and Rutgers, but one of the features of public sector labor relations in the state service at the time of the election in 1973 was that Governor Cahill had taken a fixed position against grievance arbitration. That position was viewed with some disfavor by public employee groups. I think it fair to say that, both in the campaign and afterwards, Governor Byrne approached the problem with a somewhat different attitude. It was his belief, to some extent I guess influenced by mine, that when one has this process of collective bargaining, one needs to accept it, and to live with it. Accepting it and living with it mean that if you are a public administrator you recognize the advantages of stability brought to the system through effective, understood, accepted procedures for contract administration. They include some impartial review of grievances.

Coupled with that was a factor often encountered in public sector labor relations both in higher education and elsewhere—an inadequate appreciation on the part of public administrators of the substantive concessions that have been made at the bargaining table, and a tendency to resist grievance arbitration. The issue seems less important if you realize that you arbitrate issues subject to the agreements you made and included in the contract.

The Bargaining Attitude

It was our philosophy in general to bargain hard, to make few concessions. We had the advantages and results of Governor Cahill's obstinacy: we inherited contracts that were relatively free of workload restrictions or practice restrictions. We thought that to some extent that was good, but we differed with

Governor Cahill on his opposition to introducing grievance arbitration into the state service generally and higher education in particular.

That was a decision that we determined to make uniformly for all state employees, including the college faculties. And as President Weiss, whom I see sitting here, the president of Kean College, well knows, that was a popular decision with the state college administrators and with the Department of Higher Education. Some of them disagreed and were prepared to argue substantive differences within the structure of the Department of Higher Education, I suspect, and accept the fact that to a certain extent these contracts were being negotiated system-wide. But many of them disagreed even more fundamentally with the notion of the Executive Office, or Executive Office agents–the Director of Employee Relations or the Governor's Counsel–participating in such decisions. There was some strain associated with that process.

For example, in the course of an impasse over negotiations a much publicized after-the-fact meeting took place between Albert Shanker, the national president of the AFT, the local AFT president and myself, in a cafeteria in New York. In fact very little happened at that discussion. The dispute was soon thereafter resolved, but both the Newark Star Ledger and the state college presidents, I think, believed that something more substantial than just a cup of coffee and a piece of cake had been on the table. In any event, I think the story demonstrates the kind of tension that exists on certain issues.

Governors will, and should be expected to, take the view that what is negotiated in public higher education affects the Governor's budgets, affects the priorities that are set within the administration, and should probably be negotiated on a system-wide basis. Wages are an obvious example. And on other contract administration issues, there may well be a fundamental, philosophical position that the Governor feels is proper to execute in his capacity. The law makes the Governor responsible for the decision. The Governor is likely to be understanding and sympathetic to unique needs; and once the critical issues of system-wide effects are resolved, decisions can probably be left to the particular service administrators.

Such tensions arise, not just in higher education, but in other services as well. For example, the Commissioner of Transportation doesn't like the fact that the Director of Employee Relations is negotiating his contract. Essentially the line we tried to draw in this area is that matters such as wages or the existence of a mode of contract arbitration would be subject to uniform state policing. Except for those very few issues of benefits, wages, and grievance arbitration, matters that are of particular concern to the particular department would be left to its determination. Within the family of higher education on the other hand there were tensions too, as you might imagine, between the central administration of the department and the individual institutions.

The Problem of Leverage

The last observation I want to make is on the question of impasse procedures. As a government official and before that as a mediator and arbitrator in higher education disputes in the public and private sectors, I have always been struck

by one of the realities of bargaining in higher education–a reality that was not quickly perceived in the beginning of this growing process: of all the services, the degree of leverage that exists on the employee side in higher education is very low, compared to other public services.

It is leverage that makes bargaining work, in my view. Not necessarily the right to strike but the possibility of some form of concerted action is the important ingredient in the negotiation. Anyone who doesn't think so fails to understand properly the true meaning of collective negotiation. It was the mutual apprehension about the possibility of a strike, a very real apprehension on the employee side as well as on the employer side, that forced hard decisions to be made a week or so ago at the midnight hour or the middle of the morning at the Hilton Hotel, when the transit workers' contract was resolved. There was a good deal of apprehension about a strike on both sides of the table and a good deal of willingness therefore to make those final decisions.

In higher education, that leverage does not exist to the same extent. Legislators do not pay much attention to the problems of higher education, but we have learned that the secret to improving Rutgers' standing in the legislature was to improve the athletic teams. That may not be the kind of values we want to cherish at the top of the scale in higher education, but it is a fact that Rutgers does very well in the legislature since it has spent a little money on basketball and football teams.

Achieving Finality

In any event, the disparity of leverage in public sector higher education bargaining makes the problem of finality a very serious one. I am not a fan of binding arbitration as a way of resolving contract disputes. As an arbitrator it strikes me as inappropriate to invest an arbitrator with the power to draft grievance procedures for you or determine the boundaries of complex working conditions. I can live with an arbitrator deciding a wage increase, within proper boundaries, if the parties have agreed to submit that issue to him. But many issues are more complex than that, and they depend on the particular knowledge that the parties themselves bring to the table.

Yet I do believe that we can find the answer to finality. It is no answer to say there need not be any finality as is now the case in the New Jersey law. I used to be very critical of the Taylor Law, and I still am, although in certain areas the process of legislative finality may have something to commend it.

But if one eliminates the possibility of no finality and the possibility of third party determination, one comes back to confront the question of whether it is possible to recognize within the narrow boundaries the limited possibility of a strike as three or four states have done. There is more and more experimenting with that. I am not sure it is the answer in higher education either. But it is interesting that after ten years of experience with collective bargaining in the public sector, I suspect that, both in the literature and in experience, we are as far from a solution to the problem of impasse determination as we were when this process started.

On the other hand, one may take comfort–at least in my experience–from the fact that the level of expertise and of skill at the bargaining table on both

sides is greatly different. The first dispute I ever mediated was a teachers' strike in Jersey City in 1969, which is a story I'll tell in closing. I was then an associate of Ted Kheel, just out of law school. He had been asked to mediate this dispute, and said he didn't have much time but he would see what he could do. He asked me to come along. I had been with him about 2 weeks, and had never seen a collective bargaining session. We went over to the Holiday Inn outside the Holland Tunnel and he said: "What are your problems?" That's the way he always starts a mediation. After about 20 minutes he got up and said, "I am sorry, I have to catch an airplane but Mr. Kaden here is a very experienced mediator and he'll stay with you."

So ten days later I finally got out of the Holiday Inn. Every now and then, when it got a little confusing and I wasn't sure what to do, I would say,"It's time for a recess." I would go to a telephone and call up the Bahamas and tell Ted Kheel: "This is what they are doing to me. What do I do now?" And sitting by the pool somewhere, he would routinely say, "Well, if you run into a stone wall in talking about substance tell them you want to have a meeting on procedure." I would go back and say that, and I'm not sure whether those textbook lessons worked or not. But when the dispute was resolved, the NJEA official said to me, "Now we can tell you that we did a little research and we found out that you have never seen one of these disputes before, but we weren't going to tell the school board until this was resolved."

10. INFLUENCES AND PATTERNS IN PUBLIC AND PRIVATE CAMPUS BARGAINING — REGIONAL AND LEGAL DIFFERENCES AND THE IMPACT OF THE POLITICAL SETTING — I

Matthew W. Finkin

Genral Counsel, AAUP

My topic is the legal differences between public and private sectors and among public jurisdictions that affect collective bargaining in higher education. One could discuss any number of these—the right to strike, or its absence, the various legal protections of the parties in the public sector; strike situations, the substitution of mandatory mediation or arbitration of disputes in some public jurisdictions; and the like.

But I would like to single out three that we have had some experience with and that, I think, do affect the product of collective bargaining, the collective agreement and its enforceability. I understand Bob Helsby will address the political and sociological aspects of bargaining; the latter may be, in fact, more influential in terms of the relationship between the parties and the nature of the bargain struck.

The law provides the framework of the background against which the parties must proceed. I will discuss three areas that are really generational:

1. The first generation of problem encountered by the extension of collective bargaining in either the public or private sectors is the determination of the appropriate bargaining unit. That is of great interest. We should not minimize the significance of the bargaining unit.

2. The second generation concerns determination of the scope of bargaining.

3. The third generation problem concerns extra-statutory limitations upon the bargain that is finally struck.

In each of these we have successively less experience. There has been more experience with unit determination than there has been with determination of scope of bargaining, and more experience with scope of bargaining than we have had with any kind of law that limits the nature of the bargain struck. I think all three of these do impinge fairly directly on the character of the collective agreement.

Bargaining Unit

First, the appropriate bargaining unit. This concerns both geographic scope and multi-campus systems and occupational inclusions and exclusions.

In the private sector, the law is perfectly straightforward. The National Labor Relations Board need only determine that the unit is an appropriate one for bargaining. There may be another, perhaps more appropriate unit, but the Board is not commanded to fashion that. It merely decides upon the petition presented whether the unit claimed is one that is appropriate for bargaining. In so doing, it invariably concerns itself with the community of interests of the employees involved.

What we must distinguish, then, and what the NLRB is careful to distinguish, is the notion of a bargaining unit or really an election district, separate and apart from bargaining structure. A union may represent a number of election districts in the employer's business and negotiate centrally with the employer on terms and conditions of employment that are common to all of his plants. Parties may agree to consolidate the bargaining unit. They may agree to negotiate certain matters centrally and certain matters locally. All of those matters are questions of bargaining structure. That's for the parties to work out. The basic building block, however, is the election district which the Board terms an appropriate bargaining unit, that is to say the unit of employees that will vote for the selection of a union or not.

Some states in the public sector, notably Oregon, have directly followed the federal model. In fact the Oregon statute says that the Oregon PERB may determine a unit that is appropriate even if another unit would be equally appropriate or more appropriate.

On the other hand, substantial arguments have been made in the public sector that a different unit policy ought to be adopted. The concern here is not with the free choice of employees in an election district that shares a true community of interest; the concern is very much management's ability to bargain.

In the private sector, the law is totally unconcerned with how management structures itself for bargaining. The law, in fact, demands that the employer send someone to the table with power to make an agreement. How he does that is the private employer's own business.

Loans of Authority

But there are difficulties in public employment by the nature of the multi-levels at which determinations are made. The state controller may have statutory power over some matters; the university trustees, the chancellor or president may have control over other matters; the governor, of course, has control over the submission of his own budget. These are serious problems, then, in management structure and so the argument is made that in order for management to be able to structure itself successfully for bargaining a different policy should be adopted. Sometimes the bigger unit, or the largest feasible bargaining unit, is preferable.

The New York Taylor Law, in fact, adopts such a policy by stating that the Public Employment Relations Board must consider not only community of interest of the employees but efficiency of government service and the level of government at which the unit ought to be structured, and the level of government where the official has effective control over terms and condition of employment. Many states have followed similar policies.

That policy is pregnant with implications in the public sector because it is in the public sector that one finds multi-campus systems coordinated or managed under a single governing board, sometimes, as in New York, including institutions that are of vastly different educational character or level. In fact the effect of the policy in New York has been to determine a single unit that includes four university centers, medical schools, four-year teacher colleges, four-year liberal arts colleges, two-year agricultural and technical colleges, maritime college, col-

lege of forestry. The unit includes 16,000 of whom only 6,600 – a large but nonetheless minority group within the overall bargaining unit–are tenured faculty. The unit includes both faculty and non-faculty, so-called ancillary, support, and professional personnel.

My own opinion is that management does need essential legal machinery to be able to structure itself successfully for bargaining in the public sector; that this may require statutory adjustments different from the federal law relating to the private sector; and that the basic approach of the bigger unit or largest feasible unit is wrong-headed. It places too much diversity within a single and constant political entity, the union, which must then reconcile this diversity by resort to its own internal political processes. The larger the unit and the more diverse the interests involved, the less successful any political organization can be in reconciling those differences.

Moreover, the effects are increasingly to remove decision making power from the local campus and in fact away from the university altogether. One can see in the agreement a reflection of bargaining within the unit which is not always to the educational advantage of the separate institutions or discrete groups within the unit. For example, the tenured faculty, I think, have had aspects of their tenure bargained away. In my final observation, I will deal with the question, Can a bargaining agent bargain away tenure, at least in the public sector? My colleague David Feller and I have proposed some statutory alternatives based largely on the approach taken in Oregon that will allow the public employer at the central level, the government, to deal effectively with a multiplicity of smaller bargaining units, essentially units that consist of the core faculty and each individual campus. As I say, not all states have accepted the largest feasible unit policy, but New York and some others have.

Scope of Bargaining

The subject of scope of bargaining has particular relevance in higher education because of the usually well developed, antecedent systems of faculty participation in institutional governance, sometimes I think wrongly called collegiality. The question is the bargainability of governance and the effect of bargaining on governance.

In the private sector the duty to bargain is determined by the statutes as dealing with wages, hours and other terms and conditions of employment. The duty to bargain actually performs three separate functions in the private sector:

First of all, if a subject is a mandatory bargaining issue, if, in other words, it falls under the express statutory head, "wages, hours and other terms and conditions of employment," management is forbidden to take unilateral action without first exhausting its obligation to bargain in good faith with the union. The duty to bargain, then, imposes a limit on management's ability to act.

Secondly, if the issue is a mandatory bargaining subject, it governs what the parties may compel one another to talk about. It is an unfair labor practice, sometimes called *per se*, to take unilateral action on a manadatory bargaining subject. It would be an unfair labor practice simply for an employer to throw up his hands and say, "I'm not going to talk about that with you."

Thirdly, by the same token the determination triggers the devices the parties may bring to an impasse–for example, a strike. It is impermissible to strike over something that is not a mandatory bargaining subject. Similarly, if the employer had refused to bargain or had taken unilateral action on such a subject and the employees strike, then it is an "unfair labor practice strike," and the strikers have rights over and above those of economic strikers.

It is interesting to notice, I think, that the determination that an issue is a mandatory bargaining subject has the least impact in the private sector where it is supposed to govern most in deciding what the parties actually may compel one another to talk about in detail. It is perfectly permissible to bargain over a non-mandatory subject with an alternative proposal that deals only with mandatory subjects so long as these are raised in good faith. For example, we did not know until the Inland Steel decision in 1948 that pensions were a mandatory bargaining subject. Prior to that time I assume the union could have said, "Well, here is our package, we want X dollars in pension but if you don't want to talk to us about pensions because it is not a mandatory bargaining subject, we simply double our wage demand." If offered in good faith, it would not be a breach of the union's duty to bargain.

Management Prerogatives

Thus, in the private sector, the determination of the subject as a mandatory one has its greatest effect in the limitation on unilateral action and on the effects of a strike based on such an issue. Moreover, wholly apart from matters that are statutorily prescribed, such as a hot cargo provision, the range of matters that are considered not to be mandatory are those which, if I may quote Mr. Justice Stewart, "lie at the core of entrepreneurial control or are managerial prerogatives." These are permissive subjects if not forbidden by some other law; if the employer is amenable to bargaining about his management prerogatives he may do so, and there is no doubt that such an agreement is enforceable.

There is considerably more ambiguity in the public sector. Many states have incorporated management rights provisions in their collective bargaining law–Hawaii, for example, makes it abundantly clear that it is illegal to bargain over management prerogatives. Other jurisdictions, at least in the decisional law of the jurisdictions, have beclouded the distinction between mandatory/permissive and permissive/illegal.

The theory offered for the distinction in the public sector is a non-delegation of sovereignty, in other words a non-delegation of public power to private groups. The logic is that the public employer is forbidden to give away its power, it has only power to bargain over wages, hours and other terms and conditions of employment; therefore, it is not a mandatory subject, it's an illegal or forbidden subject, and the contract made upon it ought to be viewed as void. Some states have taken that position, others have taken a kind of middle ground.

Tenure and Collegiality

New York does draw the distinction between mandatory and permissive; however, even in the case of a permissive subject, the Court of Appeals has

indicated that an agreement on a subject might still be declared void by a court if it falls afoul of some clear statutory directive or – and the Court of Appeals provides a very crisp standard for the courts – if it is violative of public policy. In the Cohoes Teachers Case, for example, the collective agreement had essentially an instant tenure system, namely, a non-tenured teacher could not be denied reappointment without just cause. The Court of Appeals took the position that adoption of a just cause standard for non-renewal was tantamount to collapsing the distinction between tenure and probation, and the school board simply lacked the power to make such an agreement. It offended the purpose of the state teacher tenure law, which required a period of probation, and was also offensive to public policy. We did not know the public policy was offended, of course, till the Court of Appeals decided the case.

Unlike the private sector, then, in the public sector the determination that something is within or without the statutory subjects of bargaining directly governs in a very straightforward and cutting sense. It governs directly what the parties actually talk about or may talk about at the bargaining table. This poses an especially ticklish problem for institutions of higher education where, as a practical manner, if one looks at collective agreements, faculty does bargain and, as I see it bargains very strongly, over governance, faculty participation in educational policy making.

The General Counsel of the National Labor Relations Board has issued an opinion – it is only his opinion, it is not a decision of the Board–that such matters of collegiality are not mandatory bargaining subjects but are at best permissive. I think he is wrong under the very test applied by federal law to the private sector. I think it is significant but it is not a hopeless situation because, as I read collective agreements, the parties do bargain about it.

Bargainability of Governance

In the public sector there are three decisions, one out of the New York PERB involving City University, one out of the New Jersey PERC involving Rutgers, and one out of the Michigan Employment Relations Commission involving Oakland University, all three of them saying essentially that matters of governance, faculty participation in governance, are now mandatory bargaining subjects. In my reading certainly of the first two, Rutgers and CUNY, both Boards opine that these subjects are permissive. Of course, we do not yet have a judicial determination as to whether they are permissive or forbidden. Again, if I thought the General Counsel of NLRB was wrong in his opinion in the private sector, I think that these public employment boards are even more wrong in the public sector.

In the public sector, the results or consequences are at least potentially far more significant. What this may mean is that a public employer, a public university, might decide to take unilateral action, unfettered by its obligation to bargain or to exhaust its duty to bargain at the table, over the system of governance. It might even decide to abolish it altogether. Moreover, it is not at all clear that a union in the public sector could seek to incorporate even existing governance systems into the agreement in order to assure adherence to those

systems by arbitration. It is even unclear whether the distinction is one between mandatory/permissive or bargainable/illegal. In fact, even a past practice clause in a collective agreement, which might otherwise be understood to incorporate existing governance systems, could be viewed as infringing on the non-delegable duties of the governing board, if the determination in that jurisdiction is that the subject is not bargainable and is therefore forbidden.

It places the whole governance system quite at risk. I think it cuts against the notion that employees are going to bargain over those matters that arise out of the employment relationship about which they feel very strongly. In the collective agreements that have been negotiated in the public and private sectors, I don't see a qualitative difference in the avidity with which faculty bargain about such matters as selection of department chairmen and role of the faculty vis-a-vis the administration governing board in personnel decisions.

Duty of Fair Representation

The last and closely related topic that I think separates the public and private sectors is the matter of extra-statutory limits imposed on the bargain struck. To be sure, in both sectors of employment, the union owes a duty of fair representation to every member of the bargaining unit. My colleague and co-author, David Feller, has pursued this subject which ties back to the issue of appropriate bargaining unit: To what extent is the law in the private sector regarding union fair representation translatable into the public sector? That is to say, when groups in the bargaining unit form coalitions to deprive a minority group in the bargaining unit of rights it has enjoyed in the past, there is at least a colorable assertion in the private sector that the duty of fair representation has been breached.

For example, in one case, a coalition of non-tenured faculty and non-tenured eligible administrators out-voted the tenured faculty representatives in the union with respect to certain bargaining positions on tenure, including retrenchment. The effect was in essence to bargain away what some considered important. Having just argued that case, I'm not sanguine about the outcome. But at least the trial court held that the bargaining agent had bargained away a tenured faculty member's right to contest the existence of financial exigency as being of sufficient dimension to necessitate its termination. The union had simply bargained it away. To me that brings up a very interesting question as to whether a bargaining agent even if it has the power to take such a step, has not breached its duty of fair representation to a minority group in the overall bargaining unit, in this case, the tenured faculty.

However, there is an additional critical difference, beyond the duty of fair representation, as between the public and private sectors: public employees are protected by the Constitution, private employees are not. A private employee technically has no First Amendment rights vis-a-vis his employer, because the employer is not acting as a state. The public employee does have such rights. The Constitution, it seems to me, does pose limitations upon the bargain struck that would not apply to bargaining today in the private sector. This area is the least developed and the case law is highly variegated at the moment, the argument being essentially one of waiver of constitutional rights.

The District Court in Colorado recently held that a management rights clause in a collective bargaining agreement had in effect bargained away the teachers' right to select supplemental instructional material produced in classes, what we in higher education would call academic freedom. It raises an interesting question whether a bargaining agent in the public sector is authorized and has the power to bargain away First Amendment rights. That case is now on appeal in the United States Court of Appeals for the 10th Circuit.

The Supreme Court of Nebraska has held that the bargaining agent cannot bargain away due process rights – a right to a prior hearing and a determination of the reasons for financial exigency. The New York Court, as I indicated, in a case that is on all fours with the Nebraska case, came down the other way. I suspect what we will see in the next few years is a growing amount of litigation over the limitations imposed either as a matter of state statute or under the Constitution. In the case of limitations on the nature of the bargain struck that arise from the fact that public employment is involved, I would argue that the Constitution places a limit on what the parties may agree on.

Conclusion

That, briefly, touches the tips of the icebergs floating in this sea of legal questions and legal practices. Before I turn it over to Bob Helsby, let me stress that among the differences between public and private sectors, the most significant, it seems to me, is the determination of the appropriate bargaining unit. I think that does have a very critical impact on the structure of bargaining, on the nature of the interests that are represented at the table, and therefore on the consequences of the bargain struck.

Some of these other problems, particularly scope of bargaining, are often ignored, somehow a sad thing. Ironically, for a law professor to say, but despite what seems to be legal prohibition or regulation of their ability to bargain, the parties are still going to bargain about those positions that are very strongly held and that arise out of the employment relationship. One hopes, the labor boards and the courts with this body of experience will develop a body of doctrine that instead of changing the academic world to fit what they perceive of as their milieu will conform the interpretation and construction of the statutes to the real needs of the academic world.

11. INFLUENCES AND PATTERNS IN PUBLIC AND PRIVATE CAMPUS BARGAINING — REGIONAL AND LEGAL DIFFERENCES AND THE IMPACT OF THE POLITICAL SETTING — II

Robert D. Helsby

Director, Public Employment Relations Services

Any generalized discussion of collective bargaining in higher education is a tall order. It is almost like a discussion of democracy, religion or international relations. The scope is so broad and diverse and covers such a multitude of facets that any such generalized treatment is extremely difficult.

First, I would like to indicate that in my working career – now covering almost 38 years – I have been a public school teacher, a college faculty member of various academic ranks, a college administrator in a number of capacities, a member and chairman of both public and private school boards, and the first chairman of the New York State Public Employment Relations Board for ten years. I cite these not as a matter of credentials, but rather to indicate the diverse points of view from which my remarks today are cast. As most of you know, I recently assumed my present position as director of a special project designed to be of assistance to public employment relations boards and commissions in the various states – a project financed by the Carnegie Corporation of New York through the American Arbitration Association. This position now gives me the opportunity to look back in retrospect in a relatively detached perspective.

I have watched faculty participation in the management of colleges and universities develop over more than 35 years and, indeed, have been an active part of that development in my various responsibilities. With that as a background, I would like to structure my remarks into three general categories –

I. The advent of collective bargaining in higher education – some general impressions and comments;

II. Factors which influence the type of collective bargaining in higher education; and

III. The system or systems of collective bargaining higher education should anticipate in the years ahead.

I. Advent of Bargaining in Higher Education

When all of the camouflage has been cleared away, collective bargaining is a shared management process in one specialized area of management decision-making – the conditions of employment for employees. One might have expected that higher education would have reacted and adapted to the collective bargaining process with facility and ease. After all, higher education has taken pride over the centuries in the principle that the academic faculty share in the administrative or management process – a process which has become known in higher education circles as collegiality and governance. One could well have reasoned that the extension of this principle to faculty participation in determining the

nitty gritty of conditions under which they work would have been a relatively simple and easy process. Not so.

Higher education has tended to view with concern and alarm the possibility of unionization and the entrance of collective bargaining to the higher education domain. I have heard some of our nation's most distinguished educators – as I am sure you have – stand before audiences and claim that the entree of collective bargaining into higher education would destroy the university. Such contentions are almost reminiscent of the late '30's when the Wagner Act was passed and when the prime contention of business management was that collective bargaining would destroy the decision-making power of management and thus would become the tool of its employees. That notion, while not totally obsolete, is rarely heard now after more than 40 years with the collective bargaining process in the private sector.

In many colleges and universities, governance has long produced heavy faculty involvement and in many instances, control of such elements as faculty hiring, promotion, discharge and discipline. In a number of the prestigious colleges and universities, governance invaded some of the so-called sacred management rights of the private sector – such as selection and hiring of management personnel, and decisions on policy which run the gamut from curriculum to faculty freedom of speech.

The Public Sector

When New York's Taylor Law was passed in 1967, if someone had asked me whether I thought that higher education should be covered under the Law, I suspect I would have advised against it. I would have done so on the ground that nobody really knew enough about collective bargaining in the public sector – let alone in the very unique area of higher education – to establish any systematic directions with confidence. As you know, there is still a great deal of discussion about the issue of whether collective bargaining really belongs in the public sector and if it does, what type of collective bargaining, whether there should be a different kind of collective bargaining for different kinds of public employees, and whether there should be a dissimilar and unique structure for education, and particularly higher education.

Thirty-nine states have now passed some kind of public sector labor relations legislation and these represent as many experiments as there are laws, with different approaches to the issues mentioned above. Even in states with no laws, it is often wrong to conclude that no collective bargaining takes place. Indeed, when I was in one of the western states recently, I learned that out of 125 school districts in that state, 87 had collectively bargained a faculty contract – all this in the absence of any specific legislation permitting or structuring such bargaining! The traditional response to how this is achieved is that it is largely done by a process I call "jungle warfare." In short, it is a matter of *ad hoc* power or muscle which an employee organization can generate, and the responses which public management makes.

In my ten years as Chairman of the New York PERB, I doubt that there is anyone who has advocated with more vigor than I the position that collective bargaining in the public sector is, should be, and indeed, must be, a fundamental-

ly different process than the traditional collective bargaining of the private sector. To oversimplify, the private sector is basically an economic process while the public sector is a political process with all of the ramifications and subtleties effectuated by this difference.

Diversity of Bargaining Patterns

I am well aware of professionals in our field who contend with an admitted degree of reason and logic that collective bargaining is a singular system of accommodating the moods, demands and needs of employers with those of the employees. The pressure for agreement, the threat of a strike or an actual strike or lockout, they contend, are the required elements and any other system is not truly collective bargaining but something else – perhaps collective negotiations or some other semantic juggling.

Personally, I reject this position. I believe that collective bargaining is not such a singular system. Rather, I believe there are, or should be, as many varieties of collective bargaining as there are businesses and industries – and closer to home, colleges and universities. There is nothing sacred about the term "collective bargaining." What it means is some type of employee involvement in the decision-making process on conditions of employment. Instead of being a single concept, it is the exact opposite – an umbrella which covers every conceivable type of employee involvement that has been invented, and many, I am sure, not yet envisioned.

Today, I would like to go a step beyond and submit the proposition that the operation, administration and management of the higher education establishment in both the public and private sectors are also unique. In the short time I have allotted, I would submit for your consideration a list of the elements which, I believe, are most influential in causing this uniqueness. Unfortunately, I cannot develop any of these at length, but a few comments about each will hopefully provide some food for thought.

II. Types of Bargaining in Higher Education

You will note by the topic assigned to me and the questions posed in the introduction of the topic that a major portion of my remarks will deal with the "influences and patterns in public and private campus bargaining . . . and the impact of the political setting." I will skip the "legal differences" since my colleague, Matt Finkin, will deal primarily with those issues.

In the light of this franchise, I have identified six factors which, I believe, have been particularly strong influences in determining the novel nature of collective bargaining in higher education. I am sure there are others, but these will at least serve to both emphasize the influences and patterns and serve as guideposts in the evaluation of what can and should lie ahead of us.

Before listing these factors, it is important to recognize that their significance is determined by their impact on the total bargaining equation. One of the best summaries of the key components of public sector bargaining I have heard was articulated by Dr. Seymour Scher, who is not only a labor relations scholar, but also former city manager of two of the largest cities in New York State. More

recently, he has been actively involved in the unusual problems of New York City. Dr. Scher said that public employee collective bargaining is determined by the following five factors:

1. The moods, the demands, the needs of the employer;
2. The moods, the demands, the needs of the employees together with the organization which represents them;
3. The moods, the demands, the needs of the political constituency;
4. The moods, the demands, the needs of the community;
5. The restrictions and limitations placed on the bargaining process by outside constrictions, such as civil service law, education law, municipal law, etc.

Dr. Scher pointed out that in the private sector only the first two of these elements are present, while in the public sector, all five are present – elements which, he feels, contribute heavily to the different nature of public sector collective bargaining. In any event, these differences are vital considerations in our discussion of higher education since we must now add the additional component – the uniqueness of higher education – a feature applicable to both public and private colleges and universities.

While these factors could be grouped in many other ways, I have grouped them in the following six areas:

1. *The nature of the college or university and the system of governance.* I'm sure I do not need to remind this audience that there is a prestige ladder in higher education referred to in some circles as the "academic totem pole." At the top of the ladder is research, followed in descending order by graduate teaching, undergraduate teaching, two-year college teaching, and continuing education. These activities are combined in every conceivable manner.

While there are exceptions to the generalization I am about to make, it is a truism today that the higher an institution climbs on the prestige ladder, the greater the faculty involvement in governance is likely to be. As faculty involvement in governance increases in both quantity and substance, the need for collective bargaining is likely to decrease – or at least, the faculty generally perceives the need in that fashion. This helps explain why relatively few of the so-called prestigious universities of the country have utilized some form of the collective bargaining process while many of the other four-year colleges and almost all of the two-year colleges have moved to some type of bargaining where it is permissible.

2. *The history, development and traditions of the higher education institution itself.* This element covers a multitude of both tangible and intangible factors. Just as every person has a different personality, so every college and university has its own too. This could include such items as whether the institution is private or public; the years the institution has existed; the affiliation or lack of affiliation with a church or other type of organization; the degree of control the sponsoring or supporting organizations exerts on the institution; the make-up, nature, power and control of the board of trustees; the size and enrollment of the institution; the curricula specialities; the geographic and demographic location of the institution. These are only a sample of the many ingredients that combine to form the personality of each college and university.

3. *The academic structure and system within which the institution operates.* One of the elements that has influenced the structure of collective bargaining in higher education has been whether the institution is a single college or university, either public or private, as opposed to being a unit in a larger higher education system (such as a multi-campus state university). This largely determines where the locus of power could be located at the state level, at the central university staff level or at the local campus level, or perhaps a combination of all three.

4. *The locus of power in decision-making.* In brief, this element faces up to the question of who has the power to make decisions. In the public sector there is a great deal of concern in many situations about who actually is the employer. There may be a joint employer, or even multiple employers. In such circumstances, it is critical to determine which of the employers has the power to make economic decisions as well as the non-economic ones.

In New York State there was – and there still continues to be – great uncertainty concerning who is the employer in the two-year colleges of the State University system. The State University Board of Trustees has certain responsibilities; the State University central administrative staff has certain responsibilities; the local sponsor – usually a county and in some instances, two or three counties – has other responsibilities. Then there is the individual college itself with its own Board of Trustees. Often this fragmented management creates overlap, uncertainty and misunderstanding. One group thinks it has the power to make a certain decision, when in truth, another may have it, or that responsibility may be shared.

In addition, there are often confrontations with faculty and fragmented faculty groups on issues of governance. Presence of a union injects a new element into the picture. Another element that magnifies the uniqueness of higher education involves students and the many student organizations that have vested interests in particular aspects of the higher education panoply.

This fragmentation and the constant accommodation which must be made to the interests of all groups has many similarities to the adaptation of collective bargaining to so-called community disputes. These disputes often involve ethnic problems, taxpayers and other groups with vital interests in certain aspects of the problem at issue. One of the major differences between traditional labor relations disputes and community disputes is that in labor relations disputes there are two parties – labor and management; in community disputes the number of parties may be almost limitless. In working with community disputes, one of the key problems is to determine who speaks for what group, whether the person who speaks really represents the group in question, and what the legitimate interests of each group are.

I submit that the employee relations equation of higher education also does not break neatly into the traditional management-labor relations mold. Management is often fragmented; employees and employee groups are often fragmented; and the legitimate interests of students further compound the problem. It is not a neat and tidy delineation of the employer-employee relationship. But then, I have found that not much in higher education is.

5. *The needs of the political constituency.* In public higher education we have often wanted to forget that these institutions exist in a political world. Particularly with the events of the last few years, the words "politics" and political" have developed a sinister aura. The political world has often taken on a cast of influence peddling, of connivance, lobbying and pressure on decision-making.

I fully recognize that this is an imperfect world with imperfect human beings inhabiting it and that government and the political world of government also are very imperfect processes. But while recognizing the existence of this climate, the political world is the means by which we operate government.

Government is the decision-making mechanism, and the way in which these decisions are made is designed to reflect the needs and interests of the people served by government. One of the things we have learned in government, for example, is that the mood and climate surrounding the taxpaying public is often subject to abrupt and drastic change. What the taxpaying public is willing to pay for its educational needs today may be something far different from what it is willing to pay six months or a year from now. This is conditioned by the economy and the ability of the taxpayer to pay for the services government provides.

This is the system, however, no matter how imperfect, out of which the wherewithal to finance higher education must come. This is why public sector labor relations practitioners frequently say that the issues which are being negotiated are not the real issues at all. The real issues are often hidden behind the scenes – in the woodwork, so to speak – and involve the whole political power structure. To think otherwise would be idealistic and the height of naivete. These are the fundamental facts of life and they must be dealt with forthrightly and honestly. Public higher education, therefore, must learn to deal pragmatically with the political establishment – the federal government, the Congress, the state legislatures, state administrations, county boards of supervisors, city councils, etc. Whether we like it or not, they determine the dollars that will be available and how they are to be spent.

Authority to Speak

There is another element in the political world that is critical – one to which I have already alluded in my discussion of the fragmented nature of management. It is the question of who represents management, who negotiates with employees and who has the power to say "yes" or "no" on the issues under discussion. One of the outstanding union leaders in New York phrased it this way when he was asked who he thought should represent management at the bargaining table: "I don't care who represents management across the table from me – I would even be willing to bargain with the man who runs the elevator. The only answer I want to know is does the person who sits opposite me have the power to say 'yes' or 'no' to my demands. If not, that person simply becomes a messenger and I am wasting my time."

In a structure where so many vested interests converge at the bargaining table, it is vital to determine who, indeed, has the power to control the decisions on the management side with regard to each condition of employment.

In private colleges and universities political problems do not normally involve government, although I hasten to add it is becoming increasingly difficult to determine whether many institutions of higher education are indeed public or private. There is such a mixture of private, federal, state and local government funds that a delineation is often impossible. Many of the same political problems face private institutions, however, even if taxpayer monies are not involved in any significant fashion. Knowing the power structure is just as essential in determining what quantities and sources of money will be available and how these monies should be disbursed.

6. *State, regional and local differences.* This element has to do with the climate and the attitudes of the constituencies that go to make up that climate. The attitudes to which I refer are those that affect governance, collegiality, collective bargaining, management, and in general, the employer/employee relations. The longer I live, the more I travel to various localities of our nation, the more I am impressed with the range in attitudinal differences that exists. These cannot be categorized by a given state, region, county or even city. They take on all complexions and complexities.

In some states I have visited there is a predominant anti-union atmosphere. Some states, for example do not even have a Department of Labor because that would seem to give some kind of tacit endorsement to unionism. In other states, where there has been a long history of dealing with certain dominant unions, there is the exact opposite – a pro-labor climate. While making these generalizations I would caution that even within such states the attitudes in a given city or a given area may be nearly 180 degrees opposite from the rest of the state.

Likewise, on shared managment or governance, a wide range of attitudes exists on the campuses of almost any given state. This range is not only a function of the physical location, but often of many of the other elements described above, such as the history, tradition, experience of the institution in question.

While the above groupings represent my attempt to articulate some of the more important elements that must be weighed in any consideration of collective bargaining in higher education, they may serve to highlight just how difficult it is to change a concept, attitude or structure in the higher education establishment. There are so many separate elements to be examined, so many and such diverse interests and groups involved, that I need not explain to you the difficulty in making radical changes in any of these – particularly within the higher education matrix.

III. The Prospect for Diversity

First, as I have said, I would like to dispel the notion that there is any one single collective bargaining system for higher education. As a matter of fact, I would postulate that the exact opposite is true, or at least, it should be true. There are almost as many systems as there are institutions. This is a major part of the uniqueness of higher education. The diversity of the various institutions, as well as the means by which these institutions are administered, create, of necessity, variations in the whole governance/collective bargaining structure.

If there is any doctrine I would like to advocate it is the doctrine of flexibility – flexibility in a carefully studied and reasoned response to the elements I have described. As faculty, administration, students and sponsors of a given institution are faced with the issue of whether they will move into some system of collective bargaining, I strongly believe there is no simple black and white answer. What should be done is to study carefully the entire structure of the institution together with its administration and then consider changes that should be made for the good of all concerned. It may very well be that the conclusions of such study would be that the present governance structure is adequate for collective bargaining purposes, or perhaps would be with certain modifications. It may be that the present governance structure will continue to be concerned with policy issues while some form of collective bargaining will be introduced to work with conditions of employment. There may be a host of other conclusions that would result from such a study.

Shared Decision Making

What we are really discussing is a system of communication between people and the organizations responsible for the management of the institution, the employees, and the students who are the recipients of its services. Unilateral management is a thing of the past. The whole idea that management will decide on a unilateral basis what is good for its employees and if they don't like the decisions they can move elsewhere has long been obsolete.

What is required is a viable system of shared decision making. This is the trademark of our society. Citizens of our society increasingly insist on a voice in the decisions that vitally affect their lives and the process by which these decisions are made. Whether you or I agree that this should be is not important – the important thing is that it is a fact of life which requires appropriate response.

In our businesses, industries, governments, schools and higher education institutions we should face the question squarely: what is the best response to this development for the benefit of the total purpose for which our institution was established?

The Role of Grievance Procedures

Before concluding I would like to share a couple of additional thoughts. Even if a college or university decides that it wants no part of the collective bargaining process, I strongly advise that one element should be cooperatively developed and that is a grievance procedure. You and I have seen campuses literally explode over some incident or issue. This can involve students, faculty, administration or perhaps all three. Often what starts out to be a small, seemingly petty grievance, gradually mushrooms to a point where faculty and students choose sides, picket, students leave, faculty and administrators resign and the campus literally explodes. What has happened is that the people who are so intimately involved become emotional – and when emotions become involved, reason departs.

A carefully developed grievance procedure negotiated by the parties can usually head off this kind of an issue and put it into a channel of reason. As the final step in a grievance procedure – when all else fails – impartial, disinterested

outsiders of recognized competence can arbitrate the issues. This procedure provides an orderly system to deal with some of the more difficult employer/-employee problems that are bound to occur in our complex society.

A Negotiated Bargaining Structure

I would also suggest that where no state law has been established that the faculty and the administration would be well advised to make the careful study I have recommended and see if an appropriate system for that institution could be negotiated. In essence, this amounts to what might be categorized as a negotiated bargaining structure. Why should a state university, for example, simply sit back and wait until a state passes a collective bargaining law which covers it? Wouldn't it be better for the university, through its appropriate administrative and faculty channels, to face up to the question on its own and to decide collectively the structure within which the determination of conditions of employment would be made?

This may sound like "pie in the sky", but I can assure you it is not. For five years while at PERB I worked with the Port Authority of New York and New Jersey (a bi-state agency) to establish a collective bargaining mechanism for them. Since the personnel were employees of neither New York nor New Jersey, they were not subject to the collective bargaining laws of those states, even though they were public employees. To secure passage of a single law in both the New York and New Jersey legislatures became an impossibility. We therefore chose the path of negotiating what amounted to a collective bargaining law between the Port Authority and the unions representing the employees. It took five years but it is signed and in operation. Indeed, the Director of Baruch's National Center for the Study of Collective Bargaining in Higher Education, Ted Lang, is the chairman of the board that administers that law. I submit while the outcome for higher education may be substantially different, the principle is the same and many institutions might well consider some adaptation of this procedure.

Strength in Diversity

In conclusion, collective bargaining will not destroy higher education if the system is understood and utilized properly. As with many other freedoms or rights, it can be abused, and particularly so when there is a failure by one or both of the parties to understand the nature of the process.

In short, what I am suggesting is that higher education is genuinely unique. Beyond that, each campus is different and the system of management, governance and collective bargaining should reflect this. Thus, if collective bargaining or some form of it is established – either in conjunction with governance, or in place of it – that system should be applicable to the needs of the constituency of that institution.

The University I worked for had a motto, "In diversity there is strength." I believe the same concept applies to collective bargaining in higher education if, indeed, that diversity has been carefully designed by all the parties involved to meet the communication needs and the appropriate balance of interests among those who must be accountable for the effectiveness of the institution meeting its goals.

12. THE FISCAL OUTLOOK FOR HIGHER EDUCATION

Morton S. Baratz

General Secretary, American Association of University Professors

As I pondered what to say in these prepared remarks, I repeatedly reminded myself of the aphorism that prophets are often without honor in their own country. I kept asking myself, What qualifies me to predict the fiscal outlook for higher education, future trends in faculty compensation, the prospect for continuation of traditional patterns in tenure and seniority? And even assuming that I am qualified to make predictions about these matters, what can I say that will not prove in the event to be utterly foolish?

The mere fact that I am standing here with a modest sheaf of typed sheets in front of me amply attests that I've resolved some of my doubts; *some* of my doubts, not all. I propose to make some forecasts, as opposed to predictions. And the forecasts will be carefully guarded, not simply because I've learned and relearned that in a world of multiple, interdependent variables and of frequent and potent random shocks forecasting is a hazardous enterprise. How many of us from the vantage point of the mid-1950's correctly projected the explosive growth in higher education during the 1960's? And how many of us correctly projected in the mid-1960's that the rollercoaster's tracks would turn sharply downward at the beginning of the 1970's?

So I put you on clear notice: I begin this task with diffidence. In two words, *caveat auditor!*

Reflections of the Economy

Any appraisal of the flow of money into higher education must begin with a truism. American colleges and universities are chips in an economic ocean characterized by strong and changing tides and buffeted from time to time by powerful storms. We must first guess, therefore, the conditions that will prevail during the next 5-10 years in the national economy and the world economy to which the national economy is tightly linked.

Two kinds of economic storm could cripple or destroy most, if not all, American colleges and universities. One is a severe, world-wide depression comparable to that of the 1930's. Some economists (and a financier-turned-novelist) believe this kind of event to be a distinct possibility in the near future. On the ground that doing so would not be really germane to the present discussion, I refrain from explaining (a) why they hold this opinion and (b) why I tend to share it, at least during my darker moments. All that needs to be said here is that if a new Great Depression occurs, its impact upon American higher education would be so severe that it would rend to tatters the American higher education system as we now know it. What vestiges remained would be pitiable.

A second kind of economic cyclone, equally devastating in its effects upon colleges and universities, would be a galloping inflation equivalent to or more severe than that which gripped much of the world, including the United States,

in 1973-74; or worse, a long-lasting inflation of the kind experienced by several Latin American countries from the early 1940's till now. The effects of our mutual experience of a few years ago are fresh enough to obviate the need for my spelling out the likely impact of galloping inflation upon our campuses. It would be bad – period.

The University Outlook

If, as I prefer, we rule out either of these extremities for the intermediate-term future, we can most safely forecast that (a) prices of the goods and services, other than labor (about which more later), bought by colleges and universities will continue to rise at roughly the same rate as they have for the last two or three years; (b) the capital value of endowments will, on the average, grow only modestly, and earnings from endowments will hardly keep pace with price inflation; and (c) governmental appropriations to colleges and universities will lag slightly to moderately behind what is necessary to offset inflation, save in those few states where recent immigration will keep enrollment rising in defiance of the general downtrend in the nation as a whole.

To be less cryptic, I belong to the noisy chorus that argues that the fiscal outlook for higher education in the next five to ten years is unattractive, possibly bleak. The public's passion for higher education, so strong in the 1960's, seems to be spent; in any case, the citizenry as a whole has other wants it insists be satisfied, notably health care. Enrollments, which were the main justification for ever larger appropriations when they were rising, will soon be declining in most states, simply because the number of 18-22 year olds will be shrinking. And enrollments will shrink further as tuition and fees march upward in futile chase after rising costs of instruction; and shrink still further as more and more postsecondary instruction is offered by non-academic organizations, including proprietary schools, business firms, governmental agencies.

Trends in Faculty Compensation

Faculty salaries are prices that are paid for professional services. Like all prices, the salaries are the product of the interplay of demand for and supply of faculty members. What are the prospective conditions of the relevant demand and supply schedules?

Demand for professors, as for all other forms of labor service, is derived from the consumers' demand for professors' output. If it is indeed likely that enrollments in colleges and universities will drift slowly downward in the next decade or so, it is no less likely that the derived demand for faculty members will also diminish. That process, you may have heard, is already in train.

The supply of academic workers is already large in relation to demand and is still being augmented by newly minted Ph.D's. Sooner or later, the supply will begin to fall as more and more actual and would-be professors conclude that job opportunities or earnings in other lines of work are more attractive than in academic life. Reduction in supply for this reason should accelerate in the middle and late 1980's, when the number of 21-44 year olds will be falling markedly and these prime-working-age persons will be in growing demand else-

where in the economy. Conceivably, the shift of workers away from academic life to other occupations and industries could be large enough to create excess *demand* for professors, thereby raising professorial real wages and purchasing power. For the next 5-7 years at least, however, the prospect is for excess supply of faculty members and therefore falling real wages in that occupation.

But, you may protest, I have ignored the impact of unionism. Guilty, as charged–but, as Mr. Dooley once put it, "thin again, not so fast." More than 25 years ago, I completed my first large-scale piece of scholarship, an inquiry into the effects of unionism on the soft coal industry. The union in question was the United Mine Workers of America and was headed during the years reviewed (1933-50) by one of the most aggressive union leaders in American history, John L. Lewis. If ever there was a labor organization which seemingly had the capacity to push wage rates above the level that would have been produced solely through the working of market forces, it had to be the UMW under Lewis's direction. Yet to my surprise and some dismay, the evidence compelled me to the conclusion that although the union did have an effect upon the *timing* of pay-rate changes and upon the composition of the compensation package, it could not produce a level of total compensation greater than that which would have resulted through the operation of unaided market forces. In plainer language, the union had little or no influence over the level of pay rates.

These findings were far from idiosyncratic. At about the same time (the early 1950's) several other investigators were reaching essentially the same conclusions, after studying the relationship between unionism and wage rates in various other industries. To my knowledge, their work has never been discredited–although it has been overlooked.

Experience with faculty collective bargaining is too limited even to attempt empirical inquiry into its impact upon salaries. A decade from now that sort of investigation will be possible. In any case and in the hope that I will be proved totally wrong, I expect faculty salaries–irrespective of the presence or absence of faculty unions–to lag behind consumer prices in the next several years. Put differently, professors' *real* incomes will tend to fall toward their "floor," which is that amount below which so many would quit academic life that the remainder would be too small in number to provide demanded instructional services.

Job Security, Tenure and Seniority

The very wording of the last two questions in the program announcement is troublesome. ("What is happening to job security? Will the traditional patterns of tenure and seniority undergo revision?") Tenure and seniority are coupled in one of the two, and the prior reference to job security suggests strongly that it too is a synonym, or near-synonym, for tenure.

The three concepts *do* have something in common, but their commonalities are far outweighed by the differences among them. Put more plainly, tenure has little to do with seniority and seniority hardly confers tenure. Similarly, although acquisition of tenure carries with it a promise of job security (within limits), tenure is awarded for reasons very different from those that typically produce job security. In the concise words of Clark Byse and Louis Joughin:

> Academic freedom and tenure do not exist because of a peculiar solicitude for the human beings who staff our academic institutions. They exist, instead, in order that society may have the benefit of honest judgment and independent criticism which otherwise might be withheld because of offending a dominant social group or a transient social attitude. *(Tenure in Higher Education,* 1959.)

Tenure, then, is the central matter of concern, not job security or seniority. So without waiting for objection I reword and combine the announcement's last two questions, viz., what challenges are now arising against the tenure system and how likely are they (and any others that may emerge) to bring about its erosion, even demolition?

Although very few of tenure's opponents are yet willing to emerge from the closet, they are numerous and becoming more so. Their arguments against the system are predictable: it shields the mediocre and incompetent–for short, the "deadwood;" it severely limits employment opportunities for the young who are not only deserving but essential to the long-run vitality of the nation's teaching, scholarly and artistic enterprises; it frustrates "affirmative action" by denying places to any significant number of women and minority-group members; it restricts the financial flexibility of colleges and universities; and so on.

The Attack on Tenure

There are several ways in which the tenure system is being undermined. Full-time teaching appointments are made on the explicit condition that they are "non-tenure-track." Fixed-term, renewable appointments–labeled "rolling contracts"–are being offered on the clear understanding that there will be no possibility of tenure after some specified period of years. Fixed tenure quotas are being re-introduced, *sub rosa* if not openly. The principle of prior service to the *profession,* as opposed to service on a particular campus, is being disregarded. More and more teaching is being done by part-time faculty members, whose pay is miserable and whose tenure is assured only for the semester or term in which the teaching is done. With strong support from college and university administrations, and their associations, an attempt has been made to exempt tenured faculty members–and they almost alone among all American workers–from the Federal law that would bar mandatory retirement before age 70. And a number of colleges and universities, acting in the name of financial exigency, have dismissed tenured professors in preference to others on the same payroll who lack tenure.

How effective has the attack been to date? What is just as important, what does the future hold for the tenure system?

As to the first question, one of my staff colleagues, Lesley Zimic, recently reported:

> With the passage of several years marked by heavy pressure on tenure, it is encouraging to see evidence of very little change in institutional compliance with AAUP-supported policies and practices. Defections from the basic tenure system have been minimal; breaches in the seven-year maximum for probation have increased very slightly; the crediting of prior service has essentially held steady; the number denied tenure at the end of the probationary period has increased, but only moderately; the increase in the percentage of tenured has also increased only moderately, as has the minority of institutions with an-

> nounced tenure quotas; the number that provide reasons for denying tenure remains about the same, and the number that provide for an appeal shows a slight increase. In fact, 95% of faculty members in American colleges and universities are serving in institutions that confer tenure. ("Tenure in a Time of Flux," pp. 3-4.)

As to what the future holds, my best guess is that the tenure system will survive intact for an indefinite period, but over time fewer faculty members, both in absolute number and as a percentage of the total, will enjoy its protection. Spelled out more fully:

The system will survive chiefly because it is conceptually sound. The principles that underpin it are logically unassailable. And whatever defects there are in the way it functions, there is no denying that on balance it has well-served American higher education and higher education's various "constituencies."

The Opposition

Although a blatant and successful assault upon tenure is unlikely, its continued subversion and erosion can be counted upon. Who will subvert the system and why?

One class of subverters is obvious: administrators and governing boards. Their motives are understandable, however deplorable. A substantially tenured faculty is a heavy burden for an administration that is having severe fiscal difficulties. For the price of onetenured professor, the institution could hire two untenured assistant professors– or ten part-timers. Were it not for the tenure system, changes in the facuty/student ratio could be swiftly effected, as could the demographic composition of the faculty. And were it not for tenure, shifts in students' demand for courses and majors could be readily accommodated at minimal cost. The pevalence of tenure makes life much harder than otherwise for administrators, so it is no wonder that so many are so ready to weaken or destroy the system.

Tenure is also being subverted from "within" as well as from "without." This is to say that–again for reasons that are understandable, but no less deplorable–among working but untenured faculty members and among those still looking for academic jobs the predominant attitude is that an insecure job is better than no job. They understnd that they enjoy neither job security nor full academic freedom in a non-tenure system, but they reason that their chances for long-term employment are greater under those circumstances than within the "up-or-out" context that is central to a tenure system.

The Defenders of Tenure

In conditions where both those who offer employment opportunities and those who seek them are willing to ignore the tenure system, what is to prevent the system's death? Won't the erosion proceed until no more than a handful (if that) of institutions still preach and practice tenure? Against this eventuality coming to pass there stand three barriers of differing degrees of strength.

First, many more persons in academic life than not–administrative officers as well as faculty members–recognize that tenure is the essential condition of academic freedom. Whatever their misgivings about certain consequences of the tenure system, this majority will continue to support the system.

Second, tenure's strongest bastions are the nation's pre-eminent college and universities, that small cohort of public and independent institutions which have for many years set the standards for the vast majority. So long as these campuses give full faith and credit to the concept of tenure, the erosive forces will have tough going.

Tenure's most important future source of protection is, at least in the abstract, faculty unionism. In the absence of collective bargaining, a tenure system exists by understanding, an understanding which can be abrogated by the governing board at any time. With bargaining's onset, the prevalence of tenure can become formally recognized, that is, become a part of the contract and thus legally enforceable during the contract's life.

It is still unclear, however, whether faculty unions as a whole will embrace the tenure system and defend it with fervor. On one hand, there is little evidence that unions have bargained away tenure in favor of other benefits. On the other hand, there are disquieting signs that faculty unions are acceding, tacitly if not expressly, to administrative practices that violate the tenure system, e.g., tenure-track appointments.

Afterthoughts

Viewed against the expansive 1960's, the outlook for higher education in the 1980's is bleak. That, however, is only one perspective: the 1980's will compare favorably by nearly any standard of reference with the 1950's and the 1950's were markedly more agreeable that the 1920's and 1930's. If that is not comfort enough, I offer you a favorite German proverb: Trees never grow to the sky.

13. THE FISCAL OUTLOOK — A BACKGROUND FOR NEGOTIATIONS

William M. Fulkerson, Jr.

Philips University

The burden of proof as a debate concept relates to establishing significant items of evidence to document your side of the question. Recent commentary on higher education almost unanimously indicates that the outlook for higher education as a whole is faced with tremendous problems and very few positive signs for the institutions, the professoriate and even the students.

Perhaps the most positive and even the most productive thing for me to do this afternoon would be to sit down after saying that the situation looks bleak, salaries are continuing to lose ground with other professions, according to the AAUP, job security will be challenged more seriously from many fronts and tenure and seniority will undergo major and decisive revisions. That technically answers the question on the topic posed on your program, and I strongly suggest that you would not challenge my conclusions with an overwhelming abundance of contrary commentary. However, my nature has been predominantly that of a realist with a strong dose of optimism, though I must admit that my four years in Washington, D.C. assaulted that optimism with great fervor. Nevertheless, I would like to take a serious look at several aspects of the fiscal situation and present a challenge for exploration to the higher education community at least as represented here.

This afternoon I would like to investigate the questions of job security and tenure as they relate to the future background for negotiations, whether they be collective negotiations or traditional academic negotiations. My format for the discussion will be inductive in that I will present several selected problems and draw my conclusions, hopefully relaying some possible suggestions for concerted action.

Defining the Problem

The concept of job security and tenure continually plague the academic community because the general public and many of our court actions have attempted to define the two as interdependent. Job security is based on an obligation between employee and employer which relates to the conditions of continued employment. While tenure to some extent also provides that, its original intent was to prevent an arbitrary and capricious attempt to dismiss a professor because of his political and religious view points, not to provide a sinecure or to claim a permanent job because of seniority. Recent legislative history has provided protection for dismissal or release because of race, religion, sex, handicap and now age.

While these are appropriate protections, it is evident to me as an academic vice president that the question of individual competency is looming even larger on the horizon. Tenure as an unquestioned, unassailable right has been assaulted

by fiscal exigency; it has been bent by student demands for evaluation and it will be tested by younger faculty as our no-growth era sets in over the next few years.

The magnitude of the problem, however, will be highlighted when each institution attempts to reorganize its planning around a seventy year old retirement mandate. (The federal government has no age limit; there are bills active to remove all age limits in businesses and since we get federal funds we can probably expect an attempt by the agencies to argue that we fall within the federal guidelines.) The very question which most of us have tried to avoid as long as possible will present itself in a different form. The issue of competence will need to be considered seriously in every case.

Issues of Competence

I suspect there are many cases where a sixty-two year old professor has been kept on until he was sixty-five because we could afford to honor his service to the university. I suspect there are some forty year olds who are kept because we don't measure competence after tenure (except for purposes of salary and promotion). When is someone not competent enough? When you are bankrupt? When are they immoral, whatever that might mean to your institution? We now know that it is not when they are sixty-five. Many of our schools had provisions to retain the outstanding and highly active professors, but now everyone must be treated alike regardless of age. Can you defend the release of your sixty-eight year old professor against that forty-five year old? The issue is not a positive declaration, but a negative burden of proof is placed on the institution. The review of comparative data and comparative judgments will be the guideline, not the exception.

I view this situation as a good news, bad news situation. The good news is two-fold; evaluation is fairer to those talented sixty-five plus professors; and university-wide evaluation, in my opinion, is fairer to the students, the faculty and the institutions. The bad news is that evaluation, especially given the past resistance and legal tangles, is expensive, hard to manage and time consuming.

Evaluating Tenured Faculty

The original promise in this speech was to present you with some background and then to propose some ideas about possible solutions. The institution where I currently serve (I use the word carefully) has initiated a program of evaluation of tenured faculty. Each year approximately one-fifth of the tenured faculty are reviewed by the same criterion as the tenure appointments. If there has been a significant deterioration of the quality of the work of a teacher he may be given a year of warning. If there isn't subsequent improvement in the performance, then a dismissal may occur.

On a more positive side, the review can be used to detect a weakness of a concern of the faculty about one of their colleagues and that individual can receive assistance and attention from the university to improve teaching or personal skills. As a church-related institution we are dependent on our ability to attract and hold students as a result of our teaching and assistance to those

students. Thus we feel that this continuing evaluation process is vital to our future.

The significance of the example lies in the total problem of competence as it relates to our institutions. Since age cannot be a factor there needs to be some gauge by which comparisons can be made for tenured faculty. It is my understanding that after 1982 a former faculty member may re-apply for a teaching position and you cannot deny the application on the basis of age. What will *you* do? What will the young, the black, the handicapped and now the older faculty do when they are denied positions because of tenure or seniority?

The issue is very clearly one of evaluation. Job security and tenure were never meant to be a sinecure. *The background of negotiations will include,* for both legal and fiscal reasons, *an agenda which will call for evaluation and a standard of competence for all faculty.*

The Enrollment Picture

The second issue which I want to discuss briefly is a concern about formula-driven enrollment budgets. The results of this budgetary mechanism can be catastrophic to both public and private institutions, as well as to the states and the constituencies that are to be served. *Size and quality relationships need to be more thoroughly investigated.*

The evidence seems to be rather convincing that there will be limited growth in college and university enrollments. Numerous Carnegie Reports, *Change* magazine, Cheit, Bowen, Stampen, McGrath, Garland and the federal government all point to major reductions in available student population. Yet, the institutions have not responded to the other clientele. According to a recent E.T.S. survey, "Few changes are occurring in procedures to select students in most colleges. . . .It appears that the same people are admitting, or not admitting, the same type of students in the same ways." Moreover, the institutions do not reveal any plans to recruit the special groups, such as minorities, veterans, older persons, or foreign students. (See *Chronicle of Higher Education,* Jack Magarell, 3-27-78, p. 8). Maybe this is a sample which is insufficient or biased, or maybe those institutions sampled should not make those types of changes. Nevertheless, the basic problem of enrollment will exist for some time to come for many institutions. If the demand for credentialed and degree holding personnel decreases, as some have predicted, then the problems will be even greater.

Public Pressure

Without entering into a long philosophical discussion of unlimited growth and the problems of mega-universities in terms of size, let's ask about the future problems of state and private institutions which do not draw students in sufficient numbers to justify economic existence. The *Daily Oklahoman* puts it rather directly in an editorial, entitled "Time to Examine Colleges," in the issue of March 20, 1978:

> Economic reality may eventually succeed where political courage fails to bring some common sense to Oklahoma's over-extended system of higher education.

When costs get high enough and enrollments fall off enough to push per capita operating expenditures to an unconscionable level at more state-supported colleges and universities, citizens will demand a legislative remedy.

Gene Howard, Senate president pro tempore, acknowledges the economic imperative but believes the political climate is not yet ripe. Talk of closing any of the schools stirs a sometimes highly emotional reaction, as has been demonstrated in recent months by Langston University supporters.

Fervent affirmation of loyalty for a given school, however, cannot replace the financial facts of life where the taxpayers' money is involved. Utility costs at state colleges and universities are going up. A recent report to the State Regents for Higher Education predicted they will reach $20.8 million in the next fiscal year, more than double the figure for three years ago.

Pressure will be exerted also to bring faculty salaries up to the regional level – Oklahoma's pay was reported to be among the lowest in 10 states surveyed. That will put an even heavier burden on the marginal schools.

Yet enrollments in the state system are declining. The total for the spring semester – 120,812 – is down .1 of 1 percent from spring a year ago. A trend is developing nationwide for young people, especially men, to shun college. Some of them no longer need it for draft deferment. Others have decided that, at least in this decade, a college education has not paid well. They are asking whether their time and money might be put to better use.

As per capita expenditures rise, citizens also will be asking whether continued state support of colleges serving fewer students can be justified. Howard singled out Langston, Panhandle and Northwestern. Others may have to be examined critically as the state decides where its education dollars will do the most good.

Issues of Size and Growth

Your response to this part of my explication may be, "What in the blue blazes does this have to do with the topic?" How can size, growth and an editorial on Oklahoma's problems correlate to the background on negotiations?

First, the editorial indicates a contemplated action based on current economic reality in a higher education system. It is indicative of the thoughts of part of a legislative population. The question as to who suffers the consequences is rather evident in at least one sector – those employed by the university. The ramifications relating to both tenure and job security are great.

Second, the belief that size and the economy of size are unassailable creates an even greater background problem for all of us. The history of our own patterns of change should convince us that by trying to reach maximum economic growth we have led ourselves into an almost irretrievable position. The move toward colleges becoming universities, the cyclical phenomena of initiating new programs and new Ph.D.'s and the tendency to compete in every possible category, including salaries, have done two observable things: they have tended to homogenize us; and they have tended to create powerful Boards to control us. We do not seem to retreat willingly. Now the time is near when we will need to ask the Boards to do something to back us away from the chasm we have created.

Jay Forrester describes what I have in mind as the problem:

> In the newly emerging circumstances, higher education is over-extended, is not being managed for future strength and lacks relevance to the needs of society. The general objectives of higher education – to create the whole man,

to unify knowledge, and to provide a perspective on social change remain valid. But the current embodiment of those goals is suitable only to the simpler past structures of a growth society. To regain relevance, the general objectives of higher education now need to be reinterpreted into a form of education more suitable to the emerging socio-economic modes of behavior.

Avenues are open down which higher education can rejoin the new direction of the social stream. Opportunities exist for educating new kinds of leaders for a reshaped world.

Those educational institutions that respond to new opportunities can again put higher education in the vanguard of society. But those who persist along the old roads will most likely fall by the wayside, and will thereby serve the public good by reducing excess capacity in higher education.

(Jay Forrester, "Moving Into the 21st Century -Dilemmas and Strategies for American Higher Education," 62nd Annual Meeting, Association of American Colleges, February 9, 1976.)

The over extension, the limit to growth and the possible solutions, at least as a start, are referred to in a commentary by Haynes Johnson when he quotes Forrester on the nature of cities:

> I see no solution for urban problems until cities develop the courage to plan in terms of maximum population, a maximum number of housing units, a maximum permissible building height, and a maximum number of jobs. A city must also choose the type of city it wants to be. To become and remain a city that is all things to all people is impossible. (Haynes Johnson, "Probing Our Future," June 8, 1975)

Bargaining on Growth

The same parallels are evident in institutions of higher education. The relevance to this as a background to collective negotiations lies in the planning. For instance, if Oklahoma were to put a ceiling on its institutions over 10,000 and then require a 10% cut in enrollment of those institutions, there would be 6,000 students available to the institutions who are currently facing insufficient enrollments. If each institution would then plan to excel in unfilled areas of economic and scholastic need, then some of the cyclical problems and the over-supply might be better evaluated. It is at this point that the values and expertise of our faculty and Boards should be utilized.

It is at this level that the most meaningful long-term collective negotiations will be fruitful: this is where job security, tenure, student-faculty ratios and educational output gain their significance. We must all realize that the short-term fears are causing us to make decisions without philosophical bases or logical extension of our missions. The point is that size and quality are not synonymous. Closing the campuses one at a time is not the only answer to lower enrollments and it is time for the faculties and administrators to begin developing proposals about the future of higher education, both public and private. Those proposals will need to discuss size, quality, rationale for existence and future plans.

Conclusion

Today, I have picked out two major areas of concern that will affect the "Fiscal Outlook for Higher Education." I have indicated that, in my opinion,

these two areas will impact on collective negotiations because the demand for effective, comparative evaluation and for economic responsibility relative to student numbers will be loud and powerful. I have argued for a response which calls for greater concern by faculty and institutions to plan their existence under the concept of limited growth and to demonstrate effective planning for their institutions and for others around them. The State of Oklahoma will make decisions for Oklahomans without higher education unless we begin to operate on a rational and collective planning cycle with each other. Many of our institutions are already victims of an imposed answer before they know the questions. As Forrester says:

> The problem of fragmentation and lack of interrelatedness in education is especially critical in times like these when the fundamental nature of society is changing. During an extended period such as we have been through, when the socio-economic system remains in a single mode of behavior, that behavior becomes understood, appropriate traditions are developed, myths of society serve useful purposes, and the past can safely be assumed to characterize the future. But at a time when behavior of the social system is rapidly shifting to a new mode, habitual responses of the past are no longer adequate. Demands then become especially insistent for education to explain what is happening and to devise an expanded conceptual framework to encompass the changing conditions. (Forrester, op. cit., p. 10.)

Should all of us have come from academic backgrounds and whether we have collective negotiations or not, the future is in the debate on what we should do with each other and not what we should do to each other.

Benjamin Franklin says it most eloquently when he suggested that "If we don't hang together we most assuredly will hang separately."

I introduced this topic with the assertion that the background for negotiations in higher education will prove to be full of problems and uncertainty, and the prognosis for improvement is, at best, cloudy. It does seem to me that greater efforts in evaluation and inter-institutional cooperation would at least help clear the miasma surrounding higher education.

14. THE ANATOMY OF A STRIKE (OAKLAND UNIVERSITY) — THE FACULTY POSITION

Louis D. Bass

Counsel, Oakland Chapter, AAUP

I feel it necessary to begin by entering a form of general denial. Oakland University through its faculty bargaining agent, the Oakland University Chapter of the American Association of University Professors, is to my knowledge the only faculty union in the United States that has gone through two strikes — the first in the Fall of 1973 which was for several weeks, and the latest in the Fall of 1976 which was for three days. I was counsel to the faculty union in both of these instances and therefore sometimes wonder if a reputation as the emerging expert of college faculties provides me any gatherings such as this.

While such a reputation might be beneficial to the size of my practice in such circles, it is not deserved, at least not on the basis of what occurred at Oakland University. In both circumstances the faculty operated with a chief negotiator who was a faculty member, and I became involved in the labor relations situation only at the crisis stage. Therefore, although I have several other strikes to my credit which indeed were at least partly of my own making, I cannot claim those at Oakland University and feel I should disclaim them in the context of what I am about to say.

Attitude Toward Campus Strikes

Let me suggest at the outset, a question that might be helpful to keep in mind throughout these remarks, a question to which I will return at their close, that is, Is it universally true that strikes, even those among college faculty, are abhorrent? Should every effort always be made to avoid strikes?

It is not an easily disputable answer to suggest that sometimes strikes are helpful and productive. My personal feeling about the 1976 Oakland strike is that the labor relations setting at Oakland might well be viewed as in a healthier circumstance after the strike than it was before. I personally sense several positive outcomes of the strike. I am not aware of any indications that Oakland University suffered long-range damage as a result of the 1976 strike. The recognition on both sides that this event could occur with unpleasant consequences, but not necessarily consequences that would devastate the institution, has I think, contributed to a better perception on both sides of the realities with which they deal.

This is not to answer my question, but to simply indicate that it is a real question with two sides to it. Consider if you will, as we look at this situation, whether or not strikes are always a negative occurrence.

Attitude of Academic Employees

[illegible] AS A DISCIPLINARY TOOL TO BE USE [illegible]

fascinating aspect of dealing with collective bargaining among university faculty members. This is the only unionized profession in the world which has as its basic occupation the analytic search for truth. It is the spillover from the day-to-day business of being an academician into the context of conducting a collective bargaining relationship that makes collective bargaining in higher education such a fascinating pursuit.

From my perspective this relationship between an academic outlook and collective bargaining gives rise to conduct which prevails, I suspect, on a fairly universal basis among academicians and which causes much of the particular difficulty encountered in academic negotiations. First, it should be remembered that collective bargaining is not a process which is designed for, nor is very successful at producing an approximation of objective truth. Simply put, in the normal collective bargaining agreement there is no person who sets to judge as to what is a "right" or "wrong" argument or agreement. What is right or good is what works. Therefore, appeals to the reason of the other side by a persuasive demonstration of the accuracy of your side's position are likely as not to be self-defeating.

The second precept grows from the first. Absolute notions about winning and losing in a negotiation are just as unproductive as concepts of "right and wrong" positions. Collective bargaining is a process, and the only person present in its most common setting who could declare that one side is the "winner" is the other side. Of course the other side usually wants to "win" as well. The result is that the struggle to prove that one is right so that one can win becomes structured in such a way that the other side has to lose, and usually since one needs to win in a way that is obvious to both sides, it is necessary to inflict a bad loss on the other side.

Such a dynamic creates a situation in which both sides go to the bargaining table convinced that their survival as an entity, either as an academic institution or as a union, is at stake, since the other side in its determination to show that it is "right" puts itself in the position of attempting to subjugate the adversary.

A party to collective bargaining which approaches the process with the principle theme itself to failure. If it "loses", it is embittered and disgusted before its constituency. If the parties finally struggle to a compromise, the price in conflict and pain is far higher than it needs to be. If the party comes out a winner, it usually does so at the expense of preserving the relationship with the other side to the extent that the long-range consequences are far more expensive than the short-range "victory."

My third thesis is almost the converse of the second. While one should not be concerned with "winning", one should rather be concerned with making sure your side's needs are met. It may be equally destructive to be excessively concerned with the needs of the process or the other side.

Collective bargaining negotiations have a dynamic all of their own. Inside pieces and a group of the most are not sufficient to override these dynamics, much as academicians on both sides of the table would like to think they can. Simply put, the process works better when everybody plays the game. Playing

excessive concern for what is the "right" position for the other side to take. Collective bargaining works best when one uses the process rather than fighting it. With these notions before you, let me turn to the specifics of the Oakland situation.

The Bargaining History

Mr. George Bowles (who served as fact finder in the strike) characterized the bargaining history at Oakland as "commonplace" and suggested that the joining of issues between the parties was "a case perhaps not of too little but too late." Nonetheless, he noted that the parties had the previous year successfully bargained a contract to conclusion without the intervention of any outside agency whatsoever.

Even more paradoxically, in a previous negotiation in 1972, Charles Rehmus, an arbitrator appointed by the parties, who has since become the Chairman of the Michigan Employment Relations Commission, lauded the parties for their innovation and imagination and constructive effort to make their bargaining system work.

One might easily assume from these two comments in juxtaposition that the history of bargaining at Oakland University had been just one long downhill slide from a propitious beginning in the past to a dismally uncommunicative, unproductive present. In my view, however, the opposite is the truth. The 1976 Oakland strike represented not so much a regression to an immature bargaining state, but instead a rather painful lesson received in the adolescence of a growing bargaining relationship.

After the two-week strike in 1975 was settled, bargaining commenced almost immediately for the 1977 contract. A impasse developed rapidly over what was to become the historic major issue of contention between the management of the University and the faculty association.

That issue was the proper application of the University's salary system and the interpretation of that system when comparing it with salaries of other Michigan state institutions which used much different methods of compiling faculty salaries. The issue is quite involved, and not worthy of a great deal of time in this context in and of itself. To put it simply, but hopefully still comprehensibly, the system calls for automatic progression to a higher base upon which a salary computation is figured for each person within a given faculty rank for a certain number of years. From this base a variety of additional compensations are made which determine ultimate salary. As these compensations may change from year to year, the system does not necessarily provide an automatic raise for each faculty member. However, the aggregate effect is to increase the average compensation of that portion of the faculty at the earlier years of service in any given rank who continue at Oakland from year to year.

The University Administration has continuously referred to this factor of the salary system as a "step system" and has insisted that in any comparison of a salary package, "credit" should be given for the use of the "step."

80

anyway at other institutions with an age-stable faculty. The union takes the position that if in fact the effect of the salary system is to raise the average salary, that is only true because the faculty is becoming more experienced and mature; that is, that rather than senior professors retiring and being numerically replaced by junior faculty members, the higher ranking people at Oakland are simply staying on and the University is benefiting by the increase in their experience. The faculty has fiercely contended that any comparison with average percentage increases at the University of Michigan or other institutions of long standing which does not take into account the difference in the level of maturation of the career cycle at those institutions and at Oakland is invidious and unfair.

The Role of Arbitration

This debate has raged ever since the beginning of the bargaining history between the parties and still rages. In 1972, the year after the two-week strike which initiated collective bargaining at Oakland, the Association and the University Administration entered into a three-year binding arbitration agreement for interest arbitration to settle contract disputes. This agreement was reached shortly before the 1972 negotiation reached the crisis stage.

The first two years of that arbitration agreement resulted in the maintenance of the salary system advocated by the faculty. As the Administration would put it, they were forced to "pay the step."

In the third year of the arbitration agreement, the arbitrator appeared, but when he gave preliminary indications of the position toward which he was heading in his decision, the parties were able to agree on settlement themselves. Once again, the "step system" persisted.

Neither side, interestingly enough, wished to maintain the arbitration provisions of the 1972 agreement when they expired in 1975. The University Administration was perceived by the faculty as believing that it had "lost" in arbitration, that is, that the normal exercise of the collective bargaining process would have provided results which they would have found to be more favorable. The faculty for their part seemed convinced that arbitration involved a serious diminution of their rights, particularly their "right to strike." In point of fact, in Michigan, strikes by public employees are unlawful, although not infrequent, and the concept of a "right to strike" in this setting is difficult for me to understand. Nevertheless, a substantial number of the faculty felt very strongly about the matter.

A Negotiated Settlement

In spite of this, the parties were able to achieve a negotiated settlement in 1975. The economics of the settlement were quite modest. The faculty ultimately demanded in last-minute crisis bargaining only that each faculty member receive approximately a $1,000 wage increase over the previous year's compensation. While the increase was figured in through the application of the "step" system, enough of a [illegible] to be considered income [illegible]

"won" and, absent arbitration, had been able to prove that their philosophical interpretation of the system was correct.

The faculty for their part were not terribly unhappy with the 1975 settlement. A prevalent feeling among the faculty was that the Administration "needed a victory." The feeling stemmed largely to exist that the Administration had been so embittered by what both it and the faculty perceived as its "losses" that its ability to make good administrative judgments was being adversely affected. Faculty members viewed a variety of personnel decisions as essentially retaliatory against Association successes at the bargaining table, and came to believe that the Administration was governing the institution with a mind largely to proving that the faculty "couldn't get away with it." Therefore, the argument ran, if the Administration felt that it had achieved a victory, this boost to the collective psyche of the Administration would result in a more positive response to decisions affecting the faculty and the overall benefit of the institution.

The 1976 Negotiations

Obviously it didn't work out that way. The 1976 negotiations were characterized by an almost total absence of movement on the part of either party, or indeed of serious discussion of salary matters, until a day or two before the Fall semester was due to begin. The Administration stated repeatedly across the bargaining table that they preferred to resolve other matters first, and did not want to waste the entire Summer in fruitless discussion of competing philosophies.

Combined with the formal position was a continuous stream of informal information reaching the faculty from a variety of sources, most prevalent of which was the University cafeteria lunch tables, that the Administration was firmly of the opinion that since the union had "caved in at the last minute" the year before, the same thing would happen again this year.

Thus, the faculty felt doubly cheated. The Administration had not only failed to respond to what the faculty union viewed as its benevolence and charity in the previous year, to add insult to injury the Administration had not even viewed the actions of the faculty as charitable, but had instead interpreted it as a sign of weakness.

The political impact of the rather resolute determination of the Administration to "tough it out" was to deny any legitimate place in the collective bargaining process for the union. The union found its membership being told first that the Administration was "right" and therefore couldn't change its position without being "untrue to its principles." Combined with this was the notion that the union would "cave in" and therefore nothing would change. The essential message received by the faculty was that the Administration was determined to act as that the result of the contract would be no different with the union present than it would with the union absent. What could have been a rather normal negotiation therefore became perceived as a struggle to the death to survive.

The [illegible] of the [illegible] Negotiations to an [illegible]

by the Administration, and an Administration which substantially discounted the power of the faculty union to act based on its reading of their weakness in the previous years, both attitudes being reinforced by continuous informal statements from administrators not directly involved with the bargaining that the union was "ready to cave in," the union found itself with no readily available way of restoring its credibility as a powerful force in the negotiation.

Any attempts that might have been made to convince the University bargainers that the faculty was really serious about its demands were likely to simply reinforce the feeling that the faculty would continue to talk big and yet do nothing. By the time it became apparent to the University that as point of fact a strike was imminent, which could not occur until the faculty had returned from the Summer recess and taken a strike vote, too little time remained to accomplish a course of bargaining which indeed could easily have taken the better part of the Summer to resolve these difficult and strongly felt issues.

The Strike Action

Thus, in the best tradition of the "heartland" of American industry, promptly at 7:00 in the morning of the day of the beginning of the strike, faculty members appeared at the gates of Oakland University sporting freshly made picket signs.

The University Administration's response to the strike continued to display the "wariness" mentality which permeated their attitude towards the bargaining relationship. The President of the University issued a statement which strongly suggested that the real reason for the strike was that the school calendar began before Labor Day that year, and the faculty members really didn't want to teach on those days anyway. The implication by heavy in his speech that had it otherwise been the case, the predictions of the Administration that the union would "cave in" would have proved correct. This was not well received by the faculty.

Unlike the 1971 strike, the University immediately sought court intervention in an attempt to enjoin the strike of the faculty, which was under Michigan law most likely to be determined to be unlawful. Through a variety of maneuverings, including what some people have continued to believe was a deliberate attempt on the part of the Association leaders to evade process servers, hearings on the University's motion for a preliminary injunction were delayed until the Tuesday following Labor Day. The Circuit Judge to whom the case was assigned expressed an "optimism that the hearing would be adjourned to that date in return for the Association's receipt of service of process and a pledge by both parties that they would attempt to bargain over the Labor Day weekend.

The bargaining over the Labor Day weekend was totally fruitless. The Association became convinced that the University at this point more than ever was determined to "win." It became apparent to the discussions that were held over the weekend that the University was unwilling to make any movement or concession which would be viewed as having occurred because of the strike. The Administration apparently decided that it [illegible]

of the faculty that would respond to this kind of pressure. Once again, the "win-lose" syndrome revailed.

This attitude on the part of the Administration was so strongly held that when the faculty opposed to end the strike voluntarily in return for an immediate agreement on the part of the University to proceed to fact finding, the Administration stood. The notion that they would even ask the State of Michigan to investigate in a non-binding fashion in return for the end of a strike apparently represented in the minds of some administrators a "giving in" to the union that they could not accept. However, the dilemma was resolved by the rather simple mechanism of having the State of Michigan's Employment Relations Commission order the fact finding, and on that basis, the faculty voluntarily ended the rike.

Fact Finding

The fact finding being that followed resulted in a report which was at the time less than keenly received by either party. After somewhat critical remarks about the bargaining history, and a rather broadly stated disdain for the arguments which had to presented to him as being "philosophical" rather than practical, Fact Finder Bowles proposed a settlement based on the provision of 7.8% increases in "as money." The term "new money" was never defined. Both sides felt immediately dissatisfied.

In fact, neither is "won." Fact Finder Bowles had not credited the Association's argumentthat the "step" should totally be discounted, reasoning that in point of fact did represent a real increase in wages. On the other hand, he held that the intrgrity of the system should be maintained. Furthermore, he had not credited the Administration's argument, nor even totally responded to the argument that it told be excluded. Rather, he had stated that some of it was "new money" andsome of it was not. The result was to leave both parties at the bargaining table keenly aware of their positions.

Given the benefit the passage of a year-and-a-half, Mr. Bowles' report perhaps deserves a high grade that was given to it by the parties at that time. In point of fact, the port did do the one thing which had not happened up until then, which is it it induced the parties to bargain. No one knows except George Bowles which his suggestion was totally deliberate or not. My suspicion is that it is. Whether intentional or not, the effect of his report was to put both sidesthere they should have been initially, namely in a "no-win" position.

The parties resumed the bargaining table and after substantial additional discussion indeed [illegible] to agreement on a salary schedule without any recognition of the strike strike activity. Much additional effort was expended during this time over issues of the propriety of hearings for the docking of pay for various [illegible], which was also settled, and which provided, perhaps helpfully, an escape route to relieve some of the frustrations which had accumulated for us. The collective bargaining agreement which was signed [illegible] which both sides [illegible] for the terms of

strike, the number of labor arbitrations and grievances, and indeed the overall level of conflict between faculty and union at Oakland University, has in my personal dropped significantly.

The Basic Conflict

Let me in analyzing these events, return to the questions I raised at the outset. First, look for a moment at what happened because both parties were substantially concerned with the determination of who was "right." The parties initially adopted a system of binding arbitration which encouraged the notion that objective truth would produce an appropriate agreement. Although I certainly don't believe this notion was shared either by the arbitrator or the advocates, somehow the notion became advanced that the party that would "win" in arbitration, was the party that was "right."

The notion that there was a single correct view of these issues led inexorably to the notion that if the result of the negotiation did not express that view then your side had "lost." Obviously the notion that one was a "loser" in the negotiations was likely to characterize the subsequent negotiations and make them more difficult. For in the subsequent negotiation the ability of the parties to perceive what is necessary to settle is hampered by a further concern with "getting back" what had been "lost" the previous year. Indeed at Oakland the doctrinal differences which led to the 1973 strike had been raging for a full five years without resolution.

It is perhaps not too obvious to how repeating that it is easier to convince an adverse party that he can live with what you are saying, than it is to convince him that you are correct and that he is obviously and stupidly incorrect.

A Question of Strategy

My colleague Kirk Hazzard will probably point out that the settlement ultimately reached was not very different from that offered before the strike began. The lesson to be drawn from that is an indictment of the University's bargaining strategy. It would imply that had the University been willing to act in a fashion which recognized a legitimate role in the process for the union as the advocate of the wishes and desires of the faculty, and as the cathartic agent for relieving the faculty's frustrations it could have achieved the same end result at a much lower cost. "Winning" a strike is not winning after all.

For the faculty's part, they in their way brought the notion just as deeply that negotiations involved the victory or defeat of positions which represented some greater or lesser measure of objective truth, sharing an excessive concern for the welfare of the Administration, namely the cost to the University's "good for nothing." It does not surprise me terribly that the attitude on the part of the faculty was not reversed as they had intended.

This leads me to my final point: neither party in a negotiation setting can really escape the role to which it is assigned. As I have said to many that you negotiating team with whom I have consulted, you can only bargain on one side of the table at a time. To [illegible] to advocate an institution's

did not communicate what it intended, but rather simply communicated what was perceived as weakness on its part. The result was not a greater degree of rationality and understanding, but an induced miscalculation of the power equation between the parties.

The Lesson

My hope is that out of what has occurred at Oakland University in 1978 and subsequently, the faculty and the Administration have come to the conclusion that the primary dynamics in negotiation do not involve reason but power. One cannot escape the role one is assigned to play in the process. Indeed, the process works best if one plays that role most vigorously and effectively. The best negotiations are accomplished when both sides work with intelligence and diligence to advocate their positions as forcefully as possible, and make the most accurate assessments as to what the other side will do in response to various actions on their own part. Attempts such as that of the Oakland University Administration to avoid such discussions, because they promote the possibility that one might "lose" or attempts such as that of the Oakland faculty to change those attitudes through the rather paternalistic and presumptuous imposition of charity upon the Administration are almost always doomed to misinterpretation. They make more difficult what they are intended to make easier.

These comments bring me, in closing, back to my original question as to whether or not strikes are always bad. I would submit that the answer as it relates to how one operates during a negotiation crisis is contained in the three points I have just discussed. While a strike might in some cases have a positive effect, if one attempts to transcend the negotiating process and decides *a priori* that "in this case a strike would be a good thing," then that will defeat the possibility that such a strike could have a beneficial effect. The proper role for any negotiator is to attempt to maximize the likelihood that his party will achieve without a strike what it would otherwise achieve if a strike were held.

If negotiators for both sides operate within their roles as forcefully and as effectively as they can, and do not attempt to override the process by making objective, omniscient judgments about it, sometimes there may be a "good" strike in that the overall result is that the process functions better thereafter. However, I would never myself, nor would I ever recommend to anybody else that they attempt to plan or control the process so that a strike is the result. Such a staged strike is equally likely to distort the process as was the case with other attempts to avoid the dynamics of negotiation at Oakland in 1973 and 1978.

The lesson for academicians, I believe, is simply this: the effective utilization of the collective bargaining process requires an application of that intellectual facilities quite different than a pursuit of academic disciplines. The process is not neutral and objective. It is inherently adversary and subjective. It is only when academicians have come, as at Oakland, through some rather painful experiences that they most unpleasantly advocate a partisan view and at the same time respect the right of their adversary to do likewise. And the system has a really

15. THE ANATOMY OF A STRIKE (OAKLAND UNIVERSITY) — A MANAGEMENT PERSPECTIVE

Robert A. Maxwell

Counsel, Dudley, Patterson, Maxwell Smith & Kelly, P.C.

In many institutions of higher education throughout the country the administration and the faculty have begun their collective bargaining relationship with a staunch refusal to recognize that they are involved in a classic labor-management confrontation. For that reason it always comes as a bit of a shock to both sides when the campus routine is interrupted by picket lines and empty classrooms due to a faculty strike. The reason for this dismay stems from the fact that for most faculty organizations the route to collective bargaining was through the back door.

AAUP Objectives

When faculty professional organizations, such as the American Association of University Professors, began their participation in the collective bargaining process their highest priorities were not the traditional "wages, hours and working conditions" issues. Rather, they viewed the process as a means by which their traditional role in the "management" of the institution could be preserved or strengthened. The [illegible] AAUP Statement on Collective Bargaining, [illegible] No. 4[illegible], [illegible] at 4[illegible], succinctly states this orientation:

> Collective bargaining, by offering a rational and equitable means of distributing economic and by providing recourse for an aggrieved individual, can facilitate and complement the sound principles and practices of higher education which the American Association of University Professors has long supported. Where appropriate, therefore, the Association will pursue collective bargaining as a major additional way of realizing its goals in higher education, and it will provide assistance on a selective basis to interested local chapters.
>
> The longstanding programs of the Association are means to achieve a number of basic ends in colleges and universities: the enhancement of academic freedom and tenure, of the process of sound academic governance. Collective bargaining properly used is essentially another means to achieve these ends, and as the same time to strengthen the influence of the faculty in the distribution of the institution's economic resources. The implementation of Association supported principles, often upon professional traditions and upon sound practice, can be effectively supplemented by a collective bargaining agreement and given the force of law. Violations of which

It was intended that the collective bargaining process would merely be overlay to the traditional collegial relationship for the purpose of giving the faculty a little more support for their participation in other words, the aims to which the process was to take place would largely be shared from the administrative point of the bargaining table. The only difference would be that the administration could no [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

I do not believe that any one seriously contemplated the prospect of a strike being necessary to achieve the desired result. In the traditional relationship "moral suasion" had generally been successful in achieving the desired result. If someone raised the question of using a strike or some other form of work to achieve bargaining demands, he was generally regarded as being unprofessional. How then, did it come to pass that we are convened in conference to discuss the whys and wherefores of the faculty strike?

The Tradition

In the traditional campus setting a potent combination of pen pressure, diplomacy and old fashioned sweat was used to reach accord on issues separating administration and faculty. As one administrator phrased it during arbitration testimony relative to the manner in which disputes over tenure were resolved, "... [W]e worked like drunken beavers to achieve consensus ..." When such efforts were not successful, disputes were often avoided by simply tabling the problem.

During one negotiations session, a faculty bargainer stated that in the past if compromise could not be reached on an issue, it was the practice of his department to do nothing until some change in circumstance or position allowed the problem to be disposed of without confrontation. If consensus was achieved under the old system, all of the participants expected that it would not be materially altered in the collective bargaining context.

These expectations were doomed to disappointment by the very nature of a collective bargaining agreement. If the two sides to a dispute are able to compromise their differences on all occasions, there is no need for a contract having the "force of law." The collective bargaining agreement is intended to deal with precisely those issues on which the parties are unable to reach consensus. In other words it is designed to resolve the disputed cases by stating, in binding terms, the rights and obligations of the opposing sides. In the pre-bargaining context it was often not necessary to answer the question of which side had the ultimate right to make a decision in the event of dispute. As I indicated above, in most cases the parties were able to reach an accommodation and the issue was never raised. In other cases the dispute was simply tabled. In those few cases where the administration took a final action contrary to that supported by the faculty it could be dismissed as faculty obstructionism. For those reasons each side could be comfortable with the notion that it had the authority to act in a way which made it comfortable with its role in the process.

The Nature of Collective Bargaining

These illusions are quickly removed at the bargaining table when the parties try and write down their respective rights and responsibilities. When informal arrangements become formal agreements the parties' perspectives change. The lines of demarcation become more clearly drawn and the instinct to protect territory increases. What seemed to be an effective means of dispute resolution [illegible]

which employees can convey to their employer the intensity with which they view a certain issue it is the one dispute resolution technique which is most often selected, at least in the early stages of the bargaining relationship.

What about the feeling that strikes are unprofessional? I believe that viewpoint will rapidly vanish. The same arguments were made in all other areas of professional bargaining relationships. Once the bargaining process is started, the pressures will inevitably lead to consideration of the strike as a means for forcing the management to relent on some particular issue. This reaction has occurred in the ranks of K-12 teachers, doctors, nurses, and many other professionals. The fact that faculty colleagues at Oakland University have gone on strike and survived, even prospered, will provide an object lesson to other faculty members. The psychological barriers are simply not as strong as they were five years ago. In fact an argument can be made by faculty collective bargaining agents that on some issues, such as academic freedom, tenure, due process and the like, any position short of strike is a shirking of professional responsibility.

Strikes and Job Actions

As we consider this topic of strike we should not limit our thinking to the classic strike vis. the total withholding of services until one side or the other concedes. Our faculties' representatives are far too skewed to be limited to such an all or nothing form of action. More limited and equally effective forms of work action are available. Such a limited form of action could be a refusal to meet committee assignments, a refusal to participate in peer review processes, a refusal to provide mid-term information such as class grades, or a series of short-term work stoppages stretching out over a long period of time.

I believe that some of these more limited forms of work action can be used by a creative collective bargaining agent to gain support for a strike under circumstances where a full-blown strike would not work. A faculty member might very well feel that a total withholding of services would be contrary to his responsibilities to the students. On the other hand, a more limited cessation of work would attack the administration, the real opponent in the bargaining table, and have little immediate effect on the student.

If in fact we are now existing in an environment that is conducive to strikes, how then can we proceed to reduce the chances a strike will take place on your campus? Every bargaining relationship has a certain history, style, past and personality. Each is unique.

I do not believe, therefore, that an in-depth analysis of the specific bargaining issues which were on the table at the time of the Oakland University strike would be beneficial to those of you confronted with negotiations at other institutions. I do believe, however, that the Oakland University experience can highlight certain elements of the bargaining process which will increase or decrease the likelihood of a strike.

Improving Relations

[illegible]

are often asked, "Is it really necessary to develop a series of positions on a given topic?" "Why do we always have to settle contracts in the wee hours of the morning?" and "Why can't we be more straightforward, give them our best shot at the onset, and get it over with?"

The truth is there are two people who don't know your best position at the outset, you and your opponent. It is a fact of human nature that the administration will not push itself as far as it will go when pushed only by its own counsel, and the faculty will not believe your first offer is your best one, even if it is as far as your side is willing to go. If the negotiations process is working properly, the compromise which is forged in the face of bargaining may very well contain concepts that neither party had considered when the initial positions were taken.

This brings us to the first concept which I believe is paramount in any bargaining relationship. Let the process work. Listen to the problems raised by your opponent, and try to find some way to solve those problems while protecting your position. This may sound to be simplistic, but you would be surprised how many times a problem reaches crisis proportions [illegible] an acceptable solution is at hand but is not so much as seriously weighed by one side or the other.

Furthermore, I do not believe that by letting the process work you have to be any less an advocate for the position you represent. You will stand a much greater chance of protecting the positions you deem most critical if you can solve your opponent's problems in a creative fashion.

I encountered the following example of this process. The faculty demanded a limit on the number of part-time positions that would be created by the administration. The administration refused to agree to such limitation on its flexibility. A crisis was averted by two shifts in emphasis. First, discussion revealed that the number of part-time positions was not the faculty's real concern. It was, instead, protection of the number of full-time positions in the university. Second, the administration was willing to agree that in time of a drop in enrollment or financial crisis the part-time faculty in the affected departments should all other things being equal, be the first employees laid off.

A layoff system was developed whereby, when layoffs became necessary, all part-time employees would be laid off before any full-time faculty would be tapped. The term necessarily would be further defined in the event we by a reduction in salary to all full-time faculty rather than a layoff. Further a limit on the number of part-time faculty positions on a grandfather of [illegible] part-time positions was incorporated in the package. The compromise was not have been ideal, but it worked and it had not been foreseen by either side when the issue of a limit of part-time employees was raised at the table.

Establishing Credibility

Another critical problem in the labors of the parties to establish their credibility as an issue across the table. This is the problem in which I referred when I said that no one will believe that your first offer is your best one.

It is necessary at [illegible]

96

water" with those solutions you find most desirable without slipping too quickly to your bottom line. You do not want to answer questions which are really not being asked by moving into a final position all at once. Also, by moving in segments, you have an opportunity to signal the other side when you are coming close to your best position.

In both Oakland University strikes, the parties were unable to establish these signals as prior positions failed to resolve the dispute being discussed. As a result, in the final stages of bargaining each side was unable to convince the other that it had been pushed to the limit. It is not certain that even a crystal clear signal will cause your opponent to settle. Still, it is absolutely certain that unless your opponent is convinced that he has achieved his maximum possible advantage, he will not settle.

In the 1971 Oakland University strike the parties had negotiated for their initial collective bargaining agreement over the entire summer, and came down to the Labor Day week-end with many critical issues still on the table. In an effort to show good faith and to resolve many noneconomic issues in its favor, the administration placed money on the table and quickly moved to what it regarded as its best money package. The faculty representative did not believe that the money package placed on the table so quickly was the last offer, and it was rejected.

That left not only the money package open, but rendered more difficult the settlement of other non-economic issues. At this point, Mr. Beer and I were called in by our respective clients and asked for assistance. Clearly, neither side had very much room for maneuvering. In those negotiations, the final settlement, after the strike, included a money package that represented the same economic cost to the University as that offered before Labor Day. Only the structuring differed. Had the importance of the structure been known to the administration and the reality of the money limitation been known to the faculty, I believe the strike could have been averted.

Sending Signals

In the 1976 Oakland University strike a similar phenomenon occurred. That time, the parties had resolved all of the issues open between them except for the economic package. On the final day of bargaining there was some initial sparring with regard to total packages without significant movement by either side. The problem was a typical one: The parameters of the administration's economic offer represented a spread of only a few percentage points. If settlement was to be reached within that acceptable range, the faculty would have to move further from its position than would the Administration.

This fact, in and of itself, would not be unusual or particularly difficult to overcome. Two factors, however, created a crisis. First, the parties had only a few hours in which to make their moves. In that context it is difficult for expectations to change and compromise to be constructed. There was too little time for the signals to be exchanged. Second, the faculty bargaining agent was ready to take its members out on strike to enforce their demands, but it did not make that fact known to the administration until the last few hours of

bargaining. The union's most potent weapon, the strike threat, was not even used!

Again, I cannot say with absolute certainty that more time to bargain or the timely use of the strike threat would have changed positions enough to create an atmosphere for settlement. It is clear however, that the absence of these forms of progressive signals made settlement without resort to a strike impossible.

The Importance of Continuity

At this juncture, I should comment on one of the unique aspects of faculty bargaining which contributes to the communications problems just mentioned. One side or the other is constantly changing the make-up of its bargaining teams. In my experience, both at Oakland and elsewhere, the faculty bargaining team members serve as volunteers and almost never volunteer for the assignment of two negotiations in a row. In this context, it is extremely difficult for the administration bargainers to develop signals with the other side.

If you compare this situation to segments of the labor movement where collective bargaining has a long history, a good deal of bargaining is carried on under the supervision of a trained professional who does not work at the facility covered by the agreement being negotiated. This situation has distinct advantages. The outsider can often gain a perspective on issues which is not evident to the inside negotiator.

The negotiator who has a degree of continuity in negotiations can establish a pattern of signals with the opposite member. Trades on issues can be set up, either directly or indirectly, and in many cases settlements worked out. At least in such a situation a strike by accident is less likely to occur. I believe you should consider whether your collective bargaining situation would be improved by establishing a more stable program through which faculty bargainers would remain for more than one negotiations session.

Trade-Offs

Another contributing factor to the Oakland strike of 1976 was the lack of trade items on the table within or in addition to the economic package. In past years I have counseled my clients, Oakland included, to push for settlement on non-economic issues prior to getting down to hard bargaining on economics. The theory behind this advice is that the administrative aspects of the contract such as management rights and tenure items should not be traded for money, at least from the point of view of the administration. In all prior negotiations some non-economic issues remained open, despite our best efforts, when the economic issues went on the table. In the final hours of bargaining, compromise on those issues assisted in compromise on the money.

In 1976, all of the non-economic issues were resolved, and no such trade-off items remained. I cannot help but think that some other trade-off issue should have been preserved. I believe this is particularly true in a circumstance where the administration has very few dollars to spend on increased salary and benefits.

The Costs of Striking

An aspect of the 1976 Oakland University strike which had little to do with that year's bargaining process was the union's belief in its own power to take the faculty out on strike, and the failure of the administration to impose any real sanctions on the 1971 strikers. The Oakland faculty bargaining representative had been able to generate a high degree of bargaining unit cohesiveness over the years between 1971 and 1976. The union officers were positive that they could engineer a successful strike.

They were, in my opinion, so impressed with this solidarity that it encouraged them to use the strike as means of achieving their goals. I do not mean to imply that the weapon was used in a wholly irresponsible manner. On the other hand, when the administration was not moved, during the final night, to a position the union was willing to accept, there was no concern over whether or not the strike call would be answered. In my opinion, the union's belief in its ability to lead a successful strike caused the union's settlement price to be higher than it would otherwise have been.

Working hand in glove with this attitude on the part of the union leadership was the "free ride" nature of the 1971 strike. Following the work stoppage, the university calendar was extended so that the full semester was completed. All faculty received full pay for the academic year. In the economic sense, the strike was not a hardship for any of the non-management participants. In the non-economic sense, the faculty felt that it had achieved some benefits from the strike which would not otherwise have been forthcoming.

Given this background, there was every reason for the faculty to view a strike as a painless way to put extreme pressure on the administration. Hence, the fertile ground for the 1976 strike.

Following the 1976 strike, Oakland imposed an economic sanction on each of the strikers. The University reduced the salary of faculty members for each day they were deemed to be on strike. This action was allowed by a particular Michigan statute, and resulted in litigation between the parties. However, the sanction was carried out, and such a strike would not in the future be viewed as costless.

During the course of the litigation regarding the so-called "pay dock," interesting questions arose as to how one determines when a faculty member is on strike. For example, if the strike covered Wednesday, Thursday and Friday and the faculty member was scheduled to teach a class only on Thursday, is he deemed to be on strike one day or all three days? As it turned out, Oakland imposed sanctions only for those days on which it could be demonstrated that a faculty member had missed a specific work assignment such as a class or a committee meeting.

Even in this limited context, the sanction had an effect over and above the economic consequences. Faculty members were required to come to terms with the fact that they were engaged in a labor strike. Persons who wished to contest their pay reduction were forced to come forward, account for their work time and explain their absence from class. It was the first instance wherein many of these individuals developed any feeling of personal involvement in the process. Theretofore they had been able to remain insulated from peer pressure by

simply cutting classes and from administration pressure by meeting their responsibilities for full pay after the strike.

Hereafter, they will recognize that a strike impacts the entire institution, and I suspect they will become more involved in the bargaining issues rather than merely watching the bargaining from afar. I believe this involvement will ultimately benefit the collective bargaining relationship. In any event, there can be little doubt that Oakland's actions following the 1976 strike will do more to discourage future strike actions than did its actions in 1971.

In summary, the 1976 Oakland strike was caused because both sides failed to work the bargaining process hard enough. They bargained for many weeks and resolved many issues; however, on the critical issues of money they failed to pull and haul at one another hard enough over a believable period of time.

Your chances of avoiding the crisis are increased dramatically once you are able to convince your opponent that he has dragged out of you the last possible concession. If you let any other impression build up, the opposition will keep searching for that last move. The best way to create the desired impression is sincerely to have tried to solve your opponent's problems while making it clear that your ability to be of help has very real limitations. If your bargaining accomplishes these goals, the chances for settlement are the greatest.

When Negotiations Collapse

In the event that negotiations break down and a strike occurs, what happens? In a very real sense the entire structure of the relationship changes. A great deal of time is spent by the administration in dealing with the practical impacts of the strike. An evaluation must be made as to whether or not the institution should remain open? What legal steps can be taken to force the faculty back to work? What provisions must be made to keep the resident student population occupied?

A great many of these considerations can and should be planned in advance. However, you will not be able to make final decisions until you see how successful the union has been in obtaining strike support from the faculty. All of this activity takes time away from the table. I believe that the time away from the table is important.

When a strike is called, the union rank and file experience an initial unity of purpose against a common foe that is not conducive to settlement. This feeling is as common in the faculty strike situation as it is in any other labor dispute. Before any progress is made, the strike must have a chance to "mature" a little.

From the administration point of view, a whole new set of guidelines come into play after a strike is actually called. Prior to a strike every effort must be made to settle the dispute within prudent boundaries. In other words, I tend to push my clients and the process extremely hard for a settlement prior to a strike. Once the effort has failed, no substantial improvement can be made in the administration's pre-strike position. The labor relations bromide covering this situation has a good deal of truth contained in it, "You can either have one long strike or be assured of a succession of short ones." In other words, if the union takes its members out on strike, and the administration makes a move it had

previously refused to make, you have convinced the union of the value of a strike.

Clarity of Position

Of course, all of the foregoing contemplates that you have reached a strike position intentionally, that is, you understand the union's position and were simply unable to meet its terms. That is often a difficult position to achieve. Therefore, I cannot stress too strongly the need for hard bargaining. Question the union closely on its positions, and listen to the answers. Force both sides to explore all aspects of the issues.

The circumstance may arise where the union has no particular goal to achieve with its strike. I believe that was the situation at Oakland University in 1976. As I indicated earlier, the union had the power to call the strike and did not fear the consequences. Even though it had no specific economic goal in mind it called the strike just to show its strength and see what would develop. Interestingly enough, this lack of direction caused the union to support a return to work after only four days. No positions had been changed, in fact little bargaining had occurred. Once the faculty had returned to work the pressure was reduced on the administration.

In this case it was the post-strike formalities which gave vent to the tensions which had caused the strike and which eventually led to settlement. The parties entered into litigation in the local circuit court regarding various aspects of the pay reduction imposed by the administration. They litigated before the local labor relations agency regarding alleged unfair labor practices. None of these actions resulted in a decision, but in the process of undertaking these battles, tensions were reduced to a point at which settlement became possible.

In this circumstance the best thing the administration could have done was to play the waiting game and allow the strike and the conflict to mature. I recognize such a position is frequently difficult to withstand. However, it is equally clear that any precipitous action may assure later strike action. Once you are in a strike, it should be used as effectively as possible to reduce its desirability as a dispute resolution technique.

The Role of the Mediator

We should consider the role of the mediator in the strike setting. Many people view the mediator as a person who will come in, become convinced of the merits of one position or the other, and assist in convincing the opposition of the wisdom of that position. In other words, it would be possible for one side or the other to win the mediation.

The mediator's only goal is settlement. In most cases, he will make no judgment as to the appropriateness of either side's position.

A settlement, whether one-sided or not, is better than no settlement. In the Oakland strike, the mediator, Mr. Leon Cornfield, offered no advice as to what position should be adopted by either side. His role was to identify the differences in position and try to find areas where they might be brought closer together.

Mr. Cornfield also tried to suggest new areas of compromise which neither party had put forward. In my opinion that is precisely the role he should play. The mediator should be used as a tool to find possible areas of settlement not theretofore explored and to act as a resource for information that might not otherwise be exchanged. That is, you might allow the mediator to convey as his suggestion a plan for settlement that you would not be willing to propose directly.

This can occur for a variety of reasons, including the fact that it represents a new package of a final position, and you cannot improve upon it to any degree. Neither side should rely upon the mediator to convince the opposition of the fairness of its position. You must be on your guard as to the mediator's blandishments to the same degree as you are to those of the opposition.

Conclusion

In the final analysis, the collective bargaining process, the very agent which has brought strikes to the college campus, provides the only effective means for reducing the threat of a strike at any given institution. In most cases collective bargaining has come on campus over strong opposition by the administration. In many cases the hostility created by that confrontation has caused an approach to bargaining which is somewhat akin to a holy war, which one side or the other finds it must win. Such an approach will insure that strikes occur.

I do not believe that either side can win labor negotiations. The process, once established, must be used as a forum for uncovering employee concerns and finding creative means of responding to these concerns. In most cases a successful effort in this direction will result in settlement, not strike.

Your ability to respond positively to the system will also be measurably enhanced to the extent that you do not become overly concerned about the possibility of a strike. There may be occasions where your opponent will make demands which simply cannot be met for economic or operational reasons. In that circumstance we must, as responsible representatives of management, recognize that there are worse things than a strike. It may be far better to close the institution with a strike than to cede so much control to the union as to make effective management impossible.

16. THE ANATOMY OF A STRIKE (OAKLAND UNIVERSITY) — THE MEDIATOR'S VIEW

Leon Cornfield

Mediator, Michigan Employment Relations Commission

My fellow panelists have detailed accurately the facts and circumstances leading up to the strike at Oakland University. Regardless of the causes of the strike, I, as the mediator assigned to the case, had certain obligations. The first, of course, was to do everything possible to get the bargaining unit back to work, and secondly, to provide some vehicle to expedite the resolution of the issue(s) separating the parties.

In the normal collective bargaining situation, a mediator would have been present, at least during the "countdown" hours, if the parties felt that they had real problems. For the mediator to come into a dispute in which the die had been already cast – namely, the AAUP had "hit the bricks" – called for rather a different approach since the positions of the parties had now polarized.

First Steps

As was pointed out by my fellow panelists, the mediator was confronted with a fait accompli, and it was obvious that a face-saving tactic had to be developed as soon as possible to avoid further polarization of the respective positions.

After consultation with the spokesmen for both sides in the dispute, the suggestion to implement fact-finding, a process by a mutually acceptable third party, was adopted. It was also agreed that the bargaining unit would return to work and enable the fact-finding process to be implemented without the pressures inherent in a strike situation. The previous speakers have outlined the causes, results, and, of course, the final disposition of the dispute. I have reiterated the chronological development as a prelude to differentiating between the function of mediation and that of fact-finding.

Role of the Mediator

In most instances, mediation occurs when the parties seek assistance because an impasse seems imminent or the collective bargaining process breaks down. It involves the services of a neutral labor relations professional – the mediator – who seeks ways to induce the parties to continue the collective bargaining process. Mediators do not make value judgments on the reasonableness or fairness of the parties' positions: he is a problem solver, a broker of imaginative solutions to labor problems. His is a subtle art of prodding, persuading and coaxing; his materials are good timing and good sense. Rather than urging the parties to accept his notion of a fair and equitable settlement, the mediator works to achieve accommodations within the framework of the parties' sense of the real issues.

Even at the hands of the most skilled practitioners, however, mediation does not always work. In the case we are attempting to analyze, the strike had been initiated prior to mediation.

When mediation fails in the private sector, the parties may have few alternatives to fighting it out with the familiar weapons of industrial conflict. But in the public sector, where strikes are almost universally prohibited and lockouts are virtually unknown, a post-mediation process – fact-finding – has been established by the public employment laws in a number of states.

The fact-finder has a different responsibility than that of the mediator: he hears the positions of the parties on the issues in dispute, and makes accommodations to resolve these disputes. In some states, based on the particular appropriate statute, the fact-finder's recommendations may be published. The theory of course, is that public knowledge and the resultant pressure will have a constructive effect on the disputants and expedite the resolution of the dispute.

Public Sector Conflicts

I have taken the time to describe the function of the mediator as a contrast to that of the fact-finder because all too often we find confusion on the part of the disputants (as well as the public) as to the function of these third party neutrals – both of whom have an important role in the resolution of public sector collective bargaining.

This mediator believes it is inevitable that there will be an increase in the use of the strike in faculty bargaining situations, despite its ostensible illegality. By definition, the collective bargaining process is an adversary proceeding. The same dynamics that create stoppages in the private and public sectors are present in the faculty bargaining process. The same inter- and intra-political situations develop as are ever present in the union-management arena.

The Adversary Relationship

Some of the variables and forces that materially affect faculty bargaining have been discussed at this seminar. The traditional roles of the college president, boards, regents and state governors will change to a stricter managerial role as a result of bargaining a contract. On the other side of the ledger, the role of the Senate, Forum, or whatever nomenclature is used to describe the various forms of governance utilized to channel various "inputs" and decision making, inevitably will suffer as the adversary role increases.

The differences between faculty bargaining situations and those of both the public and industrial areas are quantitative, not qualitative. Colleges and Universities, as well as their respective faculties are subject to the identical dynamics that occur in the rest of society's institutions. Given an adversary relationship, the process must evolve into basic conflict at some point. All of the ingredients that professional negotiators and mediators deal with in dispute resolution in public and private sector negotiations every day are present in the arena of faculty bargaining.

As to the effect of conflict upon the institution, internally there will be changes in traditional roles – and in the role of the faculties. The collective bargaining agreement will define specific rights and specific obligations.

The Future

Let me conclude by stating that I have seen little, if any, evidence that the evolution of the bargaining process pertaining to faculty will be any different than what experience has shown us in the industrial area.

When public employees achieved legal bargaining rights, they followed the identical patterns in the negotiation process as did their predecessors in the industrial collective bargaining process. To put it bluntly, once a group obtains the right to bargain over wages, hours and working conditions, a union-management relationship must develop, and concurrently, the rules of the game are such that the respective internal roles of the parties must adapt to the contractual structuralization as the collective bargaining agreement becomes more sophisticated.

17. SUMMATION

Theodore H. Lang

Director, NCSCBHE

The last item on the agenda is the summation. I don't intend to hold you long. A summation easily can be very short and could merely say that hopefully there was a valuable interplay of thinking, a valuable exchange of experiences, and that each of you was able to take significant ideas of value to you from the session and that they will be of use to you in the future. That would be the simplest kind of summation.

Another kind of summation would endeavor a rather full treatment of what has been going on. But there can be no fast synthesis of what went on in the past two days. No consensus developed in any significant way across the board on the various problems. I'm not going to endeavor to do that. What I will try to do is take a few minutes to tick off a half-dozen major points or subjects.

There is a difference of opinion about the uniqueness of collective bargaining in higher education, whether it is unique, or not unique. Perhaps there is a uniqueness of collective bargaining in every occupation, in every industry and in every trade. We who are in higher education think there is a special situation in higher education, and that has been the theme of this conference.

Let me list just some of the things that have run through the sessions and have been identified in the sessions, most of them along the lines of uniqueness in higher education.

1. Point one involves power shifts. There are two parts to this. One part is the shift from exclusive management to joint determination by both management and labor in the areas that are subject to collective bargaining. You heard a great deal about that. The important point is that sharing of authority is not a giving up of authority by management; it is a giving up of a unilateral authority. Management must still agree to whatever is done, and management can stand firm on what it believes. It can give or refuse to give, even in regard to

wages, hours and terms and conditions of employment—certainly in regard to those areas of bargaining that are not mandatory.

The second power shift is the one that comes with a change in the locus of decision making through collective bargaining. Anyone experienced in collective bargaining knows that power is involved where many policy decisions are being made. When the collective bargaining locus shifts from single campus to multicampus, where a Chancellor or a board acts, or the shift is from a Chancellor to the Governor's office, there is a transfer of power that goes with the change in locus of decision making.

How significant is that? On money we heard that it was very significant. On grievance and arbitration Lew Kaden seems to suggest that his Governor believes in final binding arbitration while the college presidents do not, and that the Governor imposed his view. There are other areas where power can shift — changes in permissible and non-mandatory subjects of bargaining, depending on the forbearance of the Governor or the Governor's representative, or the Chancellor or his representative.

2. We have been talking about uniqueness, and there is a uniqueness in collegiality. Three points are relevant: One is the sharing of power on programs, curriculum, quality of education, and student standing. Such sharing has gone on in many institutions over many years, and that is unique compared to other governmental organizations and private enterprises.

I merely call attention to the uniqueness without going into detail. The peer judgment on hiring, tenure, reappointment, promotion, is unique. In private industry peers do not do these things. Normally this is a hallmark in the decision as to who is in the bargaining unit, who is involved in labor relations and who is not. In industry, if you hire or fire or evaluate, you are a supervisor and excluded from collective bargaining.

Of great significance is the distinction between the reappointment process in a college and the probationary process elsewhere. The probationary process elsewhere depends on satisfactory service, and the presumption is continued employment. In the university after a one-year term there is generally no presumption of reappointment and you are out in the market. They can let you go even if you're excellent, because someone else may seem preferable to the peer judgment.

3. The third major point is the uniqueness of promotion opportunities in universities. Most industries have a hierarchical organization with limited promotion opportunities, but the university, conscious of professorial rank, believes that everyone should either move up or move out. This fact also creates tensions that do not ordinarily exist in the economic arena.

4. The fourth point on uniqueness is the bargaining unit. This item ran through our two-day meeting. We think it is more difficult to make unit determinations in higher education. Do we include the part-time employee, the chairman, other professionals, non-tenured tracks, members of the professional schools? Unit determination in higher education is indeed unique.

5. Scope of bargaining is the fifth major point. In private industry, it is a rarity for a union to be charged with insisting on bargaining a non-bargainable issue, a non-mandatory issue. In government and in universities, however, unions

are frequently subject to challenge because of the items they put on the table. Even in the private institutions it is conceivable that the National Labor Relations Board might have serious concern about that bargainability of curricular and other matters subject to faculty governance.

The workload issue seems more complex in the universities than in industry generally. The problem of quantity versus quality is quite difficult. Quantification may lead to objectivity but not to validity. There is inevitable concern about the impact of the productivity issue on the quality of education.

6. The sixth point relates to evaluation. Elsewhere rating is done by a supervisor; primarily in the universities it is generally done by one's peers. That is a major difference.

Similarly, grievance machinery has its own unique limitations. In universities there is a tendency to exclude the substance of peer judgment from the grievance machinery. Why you don't hire somebody, why you don't reappoint somebody, why you deny tenure to somebody, why you don't promote somebody – such substantive decisions are generally not reviewable in arbitration. Process may be reviewable in arbitration, but not the substance. In private industry such determinations made by supervisors are generally reviewable in grievance machinery and in arbitration.

But concepts of academic freedom call for a distinctive approach. In industry, though there may be participation, policy is determined at the top, and the employees who don't conform are subject to discipline. In the university, the independence of the teacher in the classroom and in research is of the essence, and has constituted the very basis of tenure.

President Segall of Baruch College, in welcoming you to this conference, said that the only intelligent way to deal with major problems is by rigorous collection of data and research. The areas touched upon in this conference are still in a state of flux and development, and it behooves us therefore as responsible academics concerned with this phenomenon to encourage and support the rigorous study of collective bargaining in higher education. Our form of higher education in this country includes a concept of academic freedom – a concept that is important in our competition with other world powers.

Harold Newman said there is an underlying and basic community of interest between faculty and university administrators. Rather than end this conference on the theme of strikes and depression, let us emphasize the theme of an underlying basic community of interest.

THE DISTINGUISHED NATIONAL ADVISORY COMMITTEE

Neil S. Bucklew	Provost, Ohio University
Margaret Chandler	Professor of Business, Graduate School of Business, Columbia University
Russel Edgerton	Executive Director, American Association for Higher Education
D. Francis Finn	Executive Vice President, National Association of College and University Business Officers
Robert Helsby	Director of Public Employment Relations Services (PERS)
R. Frank Mensel	Executive Director, College and University Personnel Association
Richard M. Millard	Director, Postsecondary Department, Education Commission of the States
Robert W. Miner	Director of Higher Education, National Education Association
Bernard Mintz	Executive Assistant to the President, William Paterson College of New Jersey
Harold Newman	Chairman, New York State Public Employment Relations Board
David Newton	Vice Chancellor, Long Island University
Woodley B. Osborne	Director, Collective Bargaining and Associate Counsel, AAUP
Joel Segall	President, Baruch College, CUNY
Albert Shanker	President, American Federation of Teachers, AFL-CIO
Clyde J. Wingfield	Provost and Executive Vice President, University of Miami
Edwin Young	Chancellor, University of Wisconsin-Madison
Joel M. Douglas	Director, NCSCBHE, Baruch College

THE NATIONAL CENTER'S FACULTY ADVISORY COMMITTEE

Dr. Theodore H. Lang, Professor of Education and former Director of Graduate Programs in Educational Administration, was Director of the National Center from 1976 to 1978. Prior to coming to Baruch in 1971, he served as Deputy Superintendent of Schools for Personnel of the New York City Department of Education and before that was Personnel Director of the City of New York and Chairman of the City Civil Service Commission. He has been active in the field of labor relations in government and public education and is a member of the AAA panel. Dr. Lang received his B.S. degree in 1936 from the City College, his M.S. in 1938 from the City College, his M.P.A. in 1942 from New York University and his Ph.D. in 1951 from New York University.

Dr. Aaron Levenstein, Professor of Management at Baruch College, has taught at the University of California, Cornell University, New York University, and the New School for Social Research. Dr. Levenstein has written and lectured extensively in the area of labor relations and has also served as consultant to various national organizations and public agencies. He is Associate Director of the National Center and edits its *Newsletter.* Professor Levenstein received his B.A. degree in 1930 from the City College and a J.D. in 1934 from New York Law School.

Dr. Sidney I. Lirtzman is Professor of Management at Baruch College and executive officer of the City University's Ph.D. program in business. He has served as a consultant to a variety of business and public sector organizations, including the New York Times, the U.S. Maritime Commission, and the New York State Division of Alcoholism and Drugs. Dr. Lirtzman received his B.S. (1951) from the City College of New York, and his M.A. (1952) and his Ph.D. (1955) from Columbia University.

Dr. Julius J. Manson, Professor Emeritus of Management and former Dean of the School of Business and Public Administration, has taught at Columbia University, New York University, the New School for Social Research, Cornell University and Rutgers University. He has a long and distinguished record in the field of labor-management relations both in the United States and abroad as a recognized authority. He received his B.A. (1931) and M.A. degrees (1932) from Columbia University, a J.D. degree (1936) from Brooklyn Law School, and his Ph.D. (1955) from Columbia University.

Bernard Mintz, former Acting President of Baruch College, served as Vice-Chancellor for Business Affairs in the Central Administration of the City University and, until March 1972, Vice-Chancellor for Administration. His positions in the City University's central administration entailed responsibilities for all aspects of personnel and labor relations for both academic and non-academic staffs and university budget and business administration. Since 1977 he has served as Executive Assistant to the President, William Paterson College of New Jersey. He received his B.S.S. degree in 1934 from the City College, and his M.A. in 1938 from Columbia University.

Dr. Samuel Ranhand, Professor of Management and former Chairman of the Department of Management at Baruch College, has been active as a consultant in management and labor relations and is a practicing arbitrator on the panel of the American Arbitration Association. He is also a mediator with particular emphasis in the education field. Dr. Ranhand received his B.B.A. degree in 1940 from the City College, his M.B.A. in 1954 from New York University, and his Ph.D. in 1958 from New York University.

PUBLICATIONS, 1979

Individual Purchases

1. *Proceedings*

Seventh Annual Conference, April 1979 (forthcoming)	$10.00
Sixth Annual Conference, April 1978	8.00
Fifth Annual Conference, April 1977	8.00
Fourth Annual Conference, April 1976	7.00
Third Annual Conference, April 1975	7.00
Second Annual Conference, April 1974	5.00
First Annual Conference, April 1973	5.00

2. *Newsletter*

Volume 7 – 1979 (5 issues)	$15.00
Volume 6 – 1978 (5 issues)	10.00
Volume 5 – 1977 (5 issues)	10.00
Volume 4 – 1976 (5 issues)	10.00
Volume 3 – 1975 (5 issues)	10.00
Volume 2 – 1974 (5 issues)	10.00
Volume 1 – 1973 (2 issues)	4.00

3. *Bibliography*

Bibliography 7, April 1979	$10.00
Bibliography 6, April 1978	10.00
Bibliography 5, April 1977	10.00
Bibliography 4, April 1976	7.00
Bibliography 3, April 1975 (Out of print)	
Bibliography 2, April 1974	5.00
Bibliography 1, April 1973 (Out of print)	

4. *Bibliography*
Other Than Faculty Personnel
(after 1976 incorporated into Faculty Bibliography)

Volume 2, 1975	5.00
Volume 1, 1974	3.00

5. *Directory*

Of Faculty Contracts and Bargaining Agents in Institutions of Higher Education, January 1979	5.00

6. *City University of New York*

Index, Digest and Tables of Arbitration And Court Cases Arising Under Collective Agreements, Vol. 1, 1969-1974	25.00

Subscription Rate

The 1979 subscription rate to National Center publications (Jan. 1 – Dec. 31, 1979) is 35.00

Includes:
- *Proceedings*, Seventh Annual Conference, 1979
- *Newsletter*, Volume 7 – 1979
- *Bibliography*, Vol. 7, 1979
- *Directory of Faculty Contracts and Bargaining Agents*, January 1979.